

The Gazette of India

PUBLISHED BY AUTHORITY

No. 19] NEW DELHI, SATURDAY, MAY 9, 1953

NOTICE

The undermentioned Gazettes of India Extraordinary were published upto the 2nd May 1953 :—

Issue No.	No. and date	Issued by	Subject
96	S. R. O. 782, dated the 17th April 1953.	Election Commission, India.	Election Petition No. 6 of 1952 of Jaipur.
97	S. R. O. 783, dated the 21st April 1953.	Ditto	Election Petition No. 6 of 1952 of Poona.
98	S. R. O. 784, dated the 25th April 1953.	Ditto	Amendment made in the Notification No. 56/2/53-2 dated the 6th February 1953.
99	S. R. O. 785, dated the 22nd April 1953.	Ditto	Election Petition No. 329 of 1952 and Election Case No. 9 of 1952, of West Bengal.
100	S. R. O. 786, dated the 28th April 1953.	Ministry of Law	Fixation of hours from 7 A.M. to 12 Noon and 1 P.M. to 5 P.M. as the hours during which the poll shall be taken in the Kurnool Parliamentary Constituency.
101	S. R. O. 787, dated the 29th April 1953.	Election Commission, India	Appointment of Hon'ble Shri Janardan A. Baxi, a Judge of the Saurashtra High Court to be the Chairman of the Election Tribunal.
102	S. R. O. 822, dated the 25th April 1953.	Ditto	Election Petition No. 207 of 1952 of Faizabad.

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of these Gazettes.

PART II—Section 3

Statutory Rules and Orders issued by the Ministries of the Government of India (other than the Ministry of Defence) and Central Authorities (other than the Chief Commissioners).

ELECTION COMMISSION, INDIA

New Delhi the 23rd April 1953

S.R.O. 833—It is hereby notified for general information that the disqualifications under clause (c) of section 7 and section 143 of the Representation of the People Act, 1951 (XLIII of 1951), incurred by the person whose name and address are given below as notified under notification No. PP-CS/52 (1), dated the 13th June, 1952, have been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section 144 of the said Act respectively.

Jardar Gurbhajan Singh,
Moti Bagh, Nabha (Pepsu).

[No. PP-CS/52(5).]

S.R.O. 839—It is hereby notified for general information that the disqualifications under clause (c) of section 7 and section 143 of the Representation of the People Act, 1951 (XLIII of 1951) incurred by the person whose name and address are given below, as notified under notification No. MD-P/52 (122)/1:YE, dated the 13th October, 1952, have been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section 144 of the said Act respectively:—

Shri R.S. Monickam,
Nallamuthanpatty, Uppattalur Post,
Sattur Taluk—Ramanathapuram District,
Madras State.

[No. MD-P/53(1)/BYE.]

New Delhi, the 1st May 1953

S.R.O. 340—It is hereby notified for general information that the disqualifications under clause (c) of section 7 and section 143 of the Representation of the People Act, 1951 (XLIII of 1951), incurred by the persons whose names and addresses are given below, as notified under notification No. MD-CS/52 (2), dated the 29th August, 1952, have been removed by the Election Commission in exercise of the powers conferred on it by the said clause and section 144 of the said Act respectively:—

Shri Kanumilli Venkatramayya,
Attili, District West Godavari.
Shri K. S. Narayana Row,
Attili, District West Godavari.

[No. MD-CS/52 (3).]

P. N. SHINGHAL, Secy.

MINISTRY OF LAW

New Delhi, the 5th May 1953

S.R.O. 841—In exercise of the powers conferred by clause (1) of article 299 of the Constitution, the President hereby directs that the following further amendments shall be made in the notification of the Government of India in the Ministry of Law No. S.R.O. 215, dated the 9th February, 1952, relating to the execution of contracts and assurances of property, namely:—

In Part XIII or the said notification:—

(1) In item 3, after entry (iv), the following entry shall be added, namely:—

“(v) Contracts and other instruments relating to the purchase of films from private producers for the Films Division; by the Chief Producer (Documentaries), Films Division, Bombay.”

(2) In item 5, after the words “Chief Producer”, the words and brackets (Documentaries)” shall be inserted.

[No. F.32-III/52-L.]

G. J. BHAVNANI, Dy. Secy.

MINISTRY OF EXTERNAL AFFAIRS

New Delhi, the 28th April, 1953

S.R.O. 842.—In exercise of the powers conferred by Section 11 of the Chandernagore (Administration) Regulation 1952 (Regulation No. I of 1952) the Central Government hereby directs that the following amendments shall be made in the Notification of the Government of India in the Ministry of External Affairs No. D.147-Eur. 1, dated the 1st April 1953 namely :—

In modification No. 10 of the said Notification in sub-section (2) of section 23—

- (a) clause (ii) and the word 'and' at the end of the said clause shall be omitted ; and
- (b) clause (iii) shall be re-numbered as clause (ii).

[D.2198.Eur.I/53.]

S. GUPTA, Under Secy.

MINISTRY OF FINANCE

New Delhi, the 29th April, 1953

S.R.O. 843.—In exercise of the powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution, the President after consultation with the Comptroller and Auditor General of India in respect of persons taken over in the Indian Audit and Accounts Department, hereby makes the following rules, namely:—

1. Short title and commencement.—(i) These rules may be called the Central Civil Services (Part B States transferred employees) Rules, 1953.

(ii) These rules shall be deemed to have come into force:

- (a) in the case of transferred employees from the State of Patiala and East Punjab States Union on the 13th April, 1950; and
- (b) in the case of any other transferred employees, on the 1st April, 1950.

2. Definitions.—In these Rules, unless the context otherwise requires:—

- (a) 'conditions of service' do not include conditions relating to discipline and control of Government servants;
- (b) 'Government' means the Government of India ;
- (c) 'relevant date' means 1st day of April, 1951, and includes any later date when a transferred employee was taken over by the Government;
- (d) 'State' with its grammatical variations means a Part B State other than the State of Jammu and Kashmir ;
- (e) 'State Rules' means the rules and orders relating to the conditions of service of Government employees in force :—
 - (i) in the case of the State of Patiala and East Punjab States Union, immediately before the 13th day of April, 1950; and
 - (ii) in the case of any other State, immediately before the 1st day of April, 1950 ; and includes any such rules and orders approved by the Government in respect of any such employees subsequent to that date;
- (f) 'transferred employees' with its grammatical variations means an employee to whom these rules apply.

3. Persons to whom rules apply.—These rules apply to persons other than those specified in rule 10 who were taken over by the Government from any of the States either on the 1st April, 1950, or any later date in consequence of Constitutional changes and extension of the executive authority of the Government to those States.

4. Conditions of service before absorption.—The conditions of service of a transferred employee shall, in relation to any period before the relevant date, be regulated by the State rules.

5. Absorption in an appropriate grade under Government.—A transferred employee shall be fitted into the appropriate grade under the Government with effect from the relevant date in accordance with such orders as may be issued by Government and any such employee who is not so absorbed shall continue to be governed by the State rules.

Provided that any modifications in the State Rules after the relevant date shall be subject to the specific orders of the Government.

6. Election between State Rules and Central Rules.—(1) A transferred employee on absorption in a department under the Government shall elect on or before a date to be specified in this behalf by the Government to be governed by the State rules or the Central rules. The election shall be—

- (i) for the State rules or the Central rules as a whole and not merely any part or parts thereof;
- (ii) made in writing in such form as may be prescribed by Government :

Provided that in all administrative matters such as applicability of Government Servants Conduct Rules, Civil Services (Classification, Control and Appeal) Rules, hours of work, holidays and transfer, there shall be no option and in all such matters every transferred employee shall be treated from the date he was taken over by the Government in the same way as other Government servants holding corresponding posts under the Central Government.

(2) Subject to such special orders as the Government may issue in this behalf an election once made shall, except to the extent specified in rule 8, be final.

(3) The State rules in favour of which the option may be exercised shall be those which were applicable to the transferred employee in a post held by him either in a substantive or an officiating capacity immediately before the relevant date :

Provided that in the case of any such employee (other than an employee of the Indian Audit and Accounts Department) who is either absorbed in a post or grade lower than the Central Grade which has been equated to the post held by him at the time of absorption or who may be subsequently reverted to such a lower post or grade after the relevant date, the conditions of his service shall be those which are applicable to the post held by him substantively on the relevant date or on the date prior to the date of subsequent reversion, as the case may be :

Provided further that in the case of an employee absorbed in the Indian Audit and Accounts Department, the provisions of this Rule shall apply in such manner as the Government may in consultation with the Comptroller and Auditor General prescribe.

(4) A transferred employee who fails to exercise any option by the date specified by Government under sub-rule (1) or who in the opinion of the Government has exercised his option ambiguously shall be treated as an optee for the Central Rules.

(5) A transferred employee who before the publication of these rules has retired from service shall also be eligible to exercise the option, provided that he was in service on the relevant date.

7. Initial pay.—A transferred employee who elects the Central rules shall have his initial pay fixed in the appropriate grade or post on the Central scales of pay in accordance with such orders as may be issued by Government.

Explanation.—Central scales of pay means the 'Prescribed Scales' specified in the Central Civil Services (Revision of Pay) Rules, 1947.

8. Duration of applicability of State rules.—A transferred employee who elects to be governed by the State rules in accordance with Rule 6 shall continue to be governed by those Rules:

Provided that subject to the next succeeding proviso such an employee on promotion to a higher post shall be brought on the Central rules finally and his pay in the higher post shall be fixed under the Fundamental Rules, his substantive pay drawn under the State rules on the date of promotion being taken as the substantive pay for such purpose :

Provided further that such an employee may, if he so desires on promotion elect to be regulated by the State rules as applicable to the post held by him on the relevant date and an option so exercised shall be treated as final so long as he continues to hold the post to which he has been promoted or an equivalent post.

9. Leave and Pension.—(1) A transferred employee who elects the Central rules shall be subject to the Revised Leave Rules, 1933, as amended from time to time. The leave to be carried forward on the relevant date shall be in accordance with such orders as may be issued by Government. Government shall also issue orders as to how leave taken in the pre-absorption period shall count for pension.

(2) A transferred employee who elects the Central rules shall be subject to the Revised Pension Rules published in the Ministry of Finance Office Memorandum No. 3(1)-Est. (Spl)/47, dated the 17th April, 1950, as applicable to est-1938 entrants as amended from time to time and all

the permanent or temporary service rendered by him under the State Government prior to absorption shall be treated as permanent or temporary service rendered under Government :

Provided that a transferred employee who was subscribing to a Contributory Provident Fund shall be brought on to pensionable service under Government and thereafter he shall not be allowed to subscribe to the Contributory Provident Fund. The Government may issue orders regarding the extent to which past service shall count towards pension.

(3) A transferred employee who elects the Central rules shall be eligible to the benefits of commutation of pension under the Civil Pensions (Commutation) Rules read with the Revised Pension Rules promulgated in the Ministry of Finance Office Memorandum No. F-3 (1)-Est (Spl)/47, dated the 17th April, 1950, as amended from time to time.

(4) For the purpose of determining the age of retirement for ministerial Government servants, the provisions of Fundamental Rule 56(b)(ii) shall apply.

10. **Saving.**—These rules shall not apply to:

- (a) employees in Railways;
- (b) employees paid from the Defence Services Estimates;
- (c) employees engaged on contract;
- (d) employees not in whole time employment of State; and
- (e) employees paid out of contingencies.

K. B. DEB, Under Secy.

(Department of Economic Affairs)

New Delhi, the 1st May, 1953.

S.R.O. 844.—In exercise of the powers conferred by section 53 of the Banking Companies Act, 1949 (X of 1949), the Central Government on the recommendation of the Reserve Bank of India hereby declares that the provisions of section 24 of the said Act, in so far as they relate to its liabilities in 'old fund', shall not apply to the Tripura Modern Bank, Limited.

[No. 4 (69) FI/53.]

New Delhi, the 4th May 1953

S.R.O. 845.—In pursuance of clause (d) of sub-section (1) of section 8 of the Reserve Bank of India Act, 1934 (II of 1934), and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Economic Affairs, No. F.3(29)-FI/50, dated the 19th July, 1950, the Central Government hereby nominates Shri S. G. Barve, I.C.S., to be a Director of the Central Board of the Reserve Bank of India, *vice* Shri K. G. Ambegaokar, I.C.S.

[No. F.3(14)-FI/53.]

S.R.O. 846.—In pursuance of clause (a) of section 10 of the Industrial Finance Corporation Act, 1948 (XV of 1948), and in partial modification of the notification of the Government of India in the Ministry of Finance No. F.9(15)-FI/49, dated the 30th June, 1949, the Central Government hereby nominates Shri G. R. Kamat, I.C.S., as Director of the Industrial Finance Corporation of India, *vice* Shri K. G. Ambegaokar, I.C.S.

[No. F.2(40)-F. III/53.]

F. C. DHAUN, Under Secy.

MINISTRY OF FINANCE (REVENUE DIVISION)

New Delhi, the 29th April 1953

S.R.O. 847.—*Corrigendum*—In this Ministry notification No. 8, Headquarters Establishments, dated the 23rd January 1953, the following words shall be deleted.

'In respect of cases allotted to them by the Commissioners of Income-tax concerned'.

[No. 39.]

N. SRINIVASAN, Under Secy.

CUSTOMS

New Delhi, the 1st May 1953,

S.R.O. 848.—In exercise of the powers conferred by section 19 of the Sea Customs Act 1878 (VIII of 1878), the Central Government hereby prohibits the export out of India to the French Settlement of Mahe of any goods liable to export duty or cess under any Act or Regulation in force in India.

[No. 27.]

E. RAJARAM RAO, Jt. Secy.

CENTRAL BOARD OF REVENUE

CUSTOMS

New Delhi, the 29th April 1953

S.R.O. 849.—In exercise of the powers conferred by section 11 of the Sea Customs Act, 1878 (VIII of 1878), the Central Board of Revenue hereby directs that the following further amendment shall be made in its notification No. 117-Customs, dated the 9th September, 1950, namely:—

In the entries in column 3 of the schedule annexed to the said Notification relating to the Port of Bedi, after item 9, the following item shall be inserted, namely:—

“ 10. Salt and Allied Industries Limited's Jetty for salt only”.

[No. 26.]

A. K. MUKARJI, Secy.

INCOME-TAX

New Delhi, the 5th May 1953

S.R.O. 850.—In exercise of the powers conferred by sub-section (6) of Section 5 of the Indian Income-tax Act, 1922 (XI of 1922), the Central Board of Revenue directs that the following further amendment shall be made in its notification S.R.O. 1214—Income-tax, dated the 1st July 1952, namely:—

In the Schedule appended to the said notification after Serial No. 20, the following item shall be inserted, namely:—

1	2	3	4	5	6
20 A	Employees of Canteen Stores Department (India) stationed anywhere in the taxable territories.	2nd Income-Tax Officer Salaries Branch I. Bombay.	Do.	Appellate Assistant Commissioner of Income-Tax, M. Range, Bombay City.	Do.

[No. 29.]

K. B. DEB, Under Secy.

MINISTRY OF COMMERCE AND INDUSTRY

CENTRAL TEA BOARD

New Delhi, the 5th May 1953

S.R.O. 851.—In pursuance of section 4 of the Central Tea Board Act, 1949 (XIII of 1949), the Central Government is pleased to notify that Mr. E. H. Hannay of Gatoonga Tea Estate, Gatoonga P.O. (Assam), nominated by the Indian Tea Association, shall be a member of the Central Tea Board *vice* Mr. D. C. Hodson.

[No. 94(1)Plant/Tea/52.]

PART II—Sec. 31

THE GAZETTE OF INDIA, MAY 9, 1953

569

S. R. O. 8 52.—The following abstract of receipts and expenditure of the Centra. Tea Board for the period 1st October 1949 to the 30th September 1950 is published in pursuance of Sub-rule (4) of Rule 21 of the Central Tea Board Rules, 1950.

CENTRAL TEA BOARD

Receipts and Expenditure Account for the year ended 30th September, 1950

Receipts							Expenditure						
Rs. A. P.				Rs. A. P.			Rs. A. P.				Rs. A. P.		
I. To Opening Balance at the commencement of the year:							I. By General Administration						
(a) Cash Balance :-							(i) Pay & allowances						
							(ii) Provident Fund Contribution						
							(iii) Other Charges (Contingen- cies)						
							<hr/>						
(i) With the Propaganda in India Section							(a) Office rent						
2,444 15 0							9,274 0 0						
(ii) With Im- perial Bank of India Netaji Su- bhas Rd. Branch, Current A/C							(b) Printing & Station- ery						
17,96,168 6 2							4,581 2 0						
(iii) With the Divisional Offices							(c) Postage, telegram & telephone						
49,141 13 5							3,974 0 9						
(iv) With the International Tea Market Expansion Board, Ltd., London							(d) Reporters' Honoraria						
1,05,276 1 0							200 0 0						
							(e) General Expenses						
							6,029 8 9						
(b) Sundry De- posits							(f) Office staff lunch						
295 0 0							1,766 0 0						
							(g) Furniture & Fixture						
							48,353 0 6						
							(h) <i>Ad hoc</i> Committee on tea						
							4,884 7 6						
							(i) Travelling expenses						
							38,821 12 9						
							(j) Repairs & Renewals						
							1,401 0 6						
							(k) Books & Periodicals						
							70 15 0						
							<hr/>						
							1,19,355 15 9						

Receipts						Expenditure										
	Rs.	A. P.		Rs.	A. P.		Rs.	A. P.		Rs.	A. P.		Rs.	A. P.		
I. To Adjustments :						II. By Propaganda in India :										
Outstandings	15,54,518	11	11			(i) Pay & Allowances	.	.	.	12,50,533	5	0				
Less adjustment for liabilities	1,45,823	12	1			(ii) Provident Fund Contribution	.	.	.	71,669	5	0				
				14,08,694	15	10	(iii) Other charges (Contingencies)	.	.	.	9,69,256	3	3	22,91,458	13	3
III. To Monies received under Section 12 of the Act						73,91,296	5	0	(a) Office rent	26,613	12	0				
									(b) Printing & Stationery	6,424	12	1	6			
IV. To Sundry Collections (towards the cost of law suit) .						264	3	3	(c) Postage, telegram & telephone	3,911	13	9				
									(d) Legal & audit fees	3,600	0	0				
V. To Sale of surplus stores						77,472	14	6	(e) Office staff lunch	12,240	7	3				
									(f) Furniture & Fixture	27,640	4	9				
									(g) Travelling & Sundry expenses	3,42,075	6	6				
									(h) General expenses	19,986	4	0				
									(i) Tea Distribution	2,57,670	7	6				
									(j) Press Publicity	2,70,669	10	9				
									(k) Outdoor Publicity	7,370	6	3				
									(l) Publication	7,573	1	9				
									(m) Cinema	13,452	3	10				
										9,99,228	10	10				

Less adjustment
of lapsed
amount due
to Military
Authorities
for supply
of tea in-
gredients,
etc., during
1948-49

29,972 7 7

9,69,256 3 3

III. By Propaganda outside India :

Amount remitted to—

(i) I.T.M.E.B., London	19,08,980	15	0
(ii) Tea Bureau, U.S.A.	18,14,349	3	0
(iii) Tea Bureau, Canada	7,60,062	10	0

44,83,392 12 0

Less Amount due from I.T.M.E.B.,
London, for 1949-50

1,17,308 5 0

43,66,084 7 0

IV. By Adjustments :

Outstandings

22,42,076 0 2

Less adjustment for liabilities

3,02,353 7 10

19,39,722 8 4

V. By Closing Balance at the end of the year :

(a) Cash Balances :—

(i) With

Propaganda
in India

Section

2,220 15 0

(ii) With Di-
visional

Offices

37,893 15 2

(iii) With Im-
perial Bank
of India,
Calcutta,

Current A/c 6,06,054 8 8

Receipts			Expenditure			
	Rs.	A. P.		Rs.	A. P.	
			(iv) With I.T. M.E.B., London	1,17,308	5	0
				7,63,477	11	10
			(b) Deposit with Indian Post & Telegraph Deptt., Calcutta	7,500	0	0
			(c) Advance remittance to I.T. M.E.B., London for the year 1950-51	12,45,486	15	0
					20,16,464	10 10
	1,08,31,054	10 2			1,08,31,054	10 2

(Sd.) S. N. LAHIRI,
Secretary.

(Sd.) A. D. KHAN,
Chairman.

[No. 309 (14)-Tea (Plant)/51.]
S. G. RAMACHANDRAN, Dy. Secy.

New Delhi, the 6th May 1953

S.R.O. 853.—In exercise of the powers conferred by sub-clause (a) of Clause 2 of the Iron and Steel (Control of Production and Distribution) Order, 1941, the Central Government is pleased to direct that the following amendment shall be made in the Notification of the Government of India in the Ministry of Commerce and Industry No. SC(A)-4(113), dated the 29th July 1952, as amended from time to time, namely:—

For the words "Director of Civil Supplies and Deputy Secretary to the Government of Punjab, Simla" occurring in the above said Notification, the words "Deputy Director, Civil Supplies and Under Secretary to the Government of Punjab, Simla" shall be substituted.

[No. SC(A)-4(113).]

S.R.O. 854.—In exercise of the powers conferred by sub-clause (b) of Clause 2 of the Iron and Steel (Scrap Control) Order, 1943, the Central Government is pleased to direct that the following amendment shall be made in the Notification of the Government of India, in the Ministry of Commerce and Industry No. SC(A)-4(113)A, dated the 29th July 1952, namely:—

For the words "Director of Civil Supplies and Deputy Secretary to the Government of Punjab, Simla" occurring in the above said Notification, the words "Deputy Director, Civil Supplies and Under Secretary to the Government of Punjab, Simla" shall be substituted.

[No. SC(A)-4(113)A.]

S.R.O. 855.—In exercise of the powers conferred by sub-clause (a) of Clause 2 of the Iron and Steel (Control of Production and Distribution) Order, 1941, the Central Government is pleased to direct that the following amendment shall be made in the Notification of the Government of India, in the late Ministry of Industry and Supply No. I(D)-4(41), dated the 7th September, 1950, as amended from time to time, namely:—

In the schedule annexed to the said Notification, for the entries—

"Director of Civil Supplies, Government of Madhya Bharat, Indore,
Deputy Director of Civil Supplies, Government of Madhya Bharat, Indore,
Assistant Directors of Civil Supplies in Madhya Bharat",

the following entries shall be substituted, namely:—

"Director of Food and Civil Supplies, Government of Madhya Bharat,
Deputy Director of Food and Civil Supplies, Government of Madhya Bharat,
Assistant Director of Food and Civil Supplies, Government of Madhya Bharat",

[No. SC(A)-4(168).]

S.R.O. 856.—In exercise of the powers conferred by sub-clause (a) of Clause 2 of the Iron and Steel (Control of Production and Distribution) Order, 1941, the Central Government is pleased to direct that the following amendment shall be made in the Notifications of the Government of India in the late Ministry of Industry and Supply No. I(I)-1(530)D, dated the 26th May, 1948, No. I(I)-1(699)/48-B, dated the 16th August, 1948, and No. I(I)-1(106), dated the 8th March, 1948, as amended from time to time, namely:—

In the schedule annexed to each of the said Notifications, for the entry—

"Director of Civil Supplies, Government of Madhya Bharat, Indore"

The entry "Director of Food and Civil Supplies, Government of Madhya Bharat" shall be substituted.

[No. SC(A)-4(168)A.]

S.R.O. 857.—In exercise of the powers conferred by sub-clause (a) of Clause 2 of the Iron and Steel (Control of Production and Distribution) Order, 1941, the Central Government is pleased to direct that the following amendment shall be made in the Notification of the Government of India in the Ministry of Commerce

and Industry No. SC(A)-4(78)A, dated the 26th September, 1951, as amended from time to time, namely:—

that for the entry "Director of Civil Supplies, Government of Madhya Bharat" in the said Notification, the following entry shall be substituted, namely, "Director of Food and Civil Supplies, Government of Madhya Bharat".

[No. SC(A)-4(168)B.]

S.R.O. 858.—In exercise of the powers conferred by sub-clause (b) of Clause 2 of the Iron and Steel (Scrap Control) Order 1943, the Central Government is pleased to direct that the following further amendment shall be made in the Notification of the Government of India in the late Ministry of Industry and Supply No. I(I)-4(78)A, dated the 6th January, 1951, as amended from time to time, namely:—

In the schedule annexed to the said Notification, for the entries

"Director of Civil Supplies, Government of Madhya Bharat, Indore,
Deputy Director of Civil Supplies, Government of Madhya Bharat, Indore,
Assistant Directors of Civil Supplies, Madhya Bharat",

the following entries shall be substituted, namely:—

"Director of Food and Civil Supplies, Madhya Bharat,
Deputy Director of Food and Civil Supplies, Madhya Bharat,
Assistant Director of Food and Civil Supplies, Madhya Bharat".

[No. SC(A)-4(168)C.]

S.R.O. 859.—In exercise of the powers conferred by sub-clause (b) of Clause 2 of the Iron and Steel (Scrap Control) Order, 1943, the Central Government is pleased to direct that the following further amendment shall be made in the Notifications of the Government of India in the late Ministry of Industry and Supply Nos. I(I)-4(78)B, and I(I)-4(78)C, dated the 6th January, 1951, as amended from time to time, namely:—

In the schedules annexed to the said Notifications, for the entry—

"Director of Civil Supplies, Government of Madhya Bharat, Indore",
the following entry shall be substituted, namely:—

"Director of Food and Civil Supplies, Government of Madhya Bharat".

[No. SC(A)-4(168)D.]

E. C. SANKER, Asstt. Secy.

MINISTRY OF FOOD AND AGRICULTURE

New Delhi, the 1st May, 1953

S.R.O. 860.—In exercise of the powers conferred by clause 11 of the Sugar and Gur Control Order, 1950, the Central Government, subject to any general or special orders which may from time to time be issued by it in this behalf, is pleased to direct that the powers under clause 3 of the said Order shall also be exercisable by the Cane Commissioner, Uttar Pradesh, for the purpose of allowing deduction in the minimum price of sugarcane fixed under the Government of India, Ministry of Food and Agriculture Notification No. S. R. O. 1672, dated the 30th September, 1952 for the 1952-53 crushing season, in the interest of the cane growers and for reasons specified under Rule 20 (8) and (9) of the Uttar Pradesh Sugar Factories Control Rules, 1938 as amended from time to time.

[No. SV-105 (1)/52-53.]

P. A. GOPALAKRISHNAN,
Jt. Secy.

(Agriculture)

New Delhi, the 2nd May, 1953.

S.R.O. 861.—In pursuance of the provisions contained in Section 4 (4) (ii) of the Indian Lac Cess Act, 1930 (XXIV of 1930), Dr. R. W. Aldis of M/s. Angelo Bros, Cossipore, Calcutta has been nominated by the Bengal Chamber of Commerce to be a member of the Governing

Body of the Indian Lac Cess Committee to represent the Shellac Manufacturing Industry *vice* Mr. J. P. Young resigned. Dr. Aldis will hold office till the 30th September, 1953, under Rule 4 (b) of the Indian Lac Cess Rules, 1930, unless he is re-nominated for a further term.

[No. F. 3-11/53-Com. (I).]

S. R. O. 862.—In pursuance of Rule 4 (ix) of the India Cotton Cess Act 1923 (XIV of 1923), the Central Government are pleased to appoint Shri B. Venkoba Rao, B.Sc. M.S. (I.A. U.S.A.) Economic Botanist to the Government of Mysore as the representative of the Mysore State on the Indian Central Cotton Committee, with effect from the 1st April, 1953.

[No. F. 1-2/53/Com-II.]

F. C. GERA Asstt. Secy.

MINISTRY OF HEALTH

New Delhi, the 5th May 1953

S.R.O. 863.—Dr. Jiba Kanta Saikia, M.B., D.T.M., A.M.S. (Sr.), Inspector General of Civil Hospitals, Assam, has been nominated by the Government of Assam, as a member of the Dental Council of India with effect from the 14th February, 1953, under clause (e) of section 3 of the Dentists Act 1948 (XVI of 1948), *vice* Lt. Col. A. N. Chopra, resigned.

[No. F.6-2/52-MI.]

S.R.O. 864.—Dr. Noshir Nowrooji Kapadia L.D.Sc., 23, Rajpur Road, Dehra Dun, was elected on the 6th February, 1953, as a member of the Dental Council of India by the dentists registered in Part A of the register of the State of Uttar Pradesh under clause (a) of section 3 of the Dentists Act, 1948 (XVI of 1948).

[No. F.6-2/52-MI(A).]

KRISHNA BIHARI, Asstt. Secy.

MINISTRY OF EDUCATION

ARCHAEOLOGY

New Delhi, the 30th April, 1953.

S.R.O. 865.—In exercise of powers conferred by sub-section (3) of section 3 of the Ancient Monuments Preservation Act, 1904 (VII of 1904) the Central Government is pleased to confirm its notification No. F. 3-66/52-A.2., dated the 4th November, 1952, declaring the ancient monuments described in the schedule annexed thereto to be protected monuments within the meaning of the said Act.

[No. F. 3-66/52-A.2.]

T. S. KRISHNAMURTI, Asstt. Secy

MINISTRY OF REHABILITATION

New Delhi, the 29th April 1953

S.R.O. 866.—In pursuance of the provisions of clause (7) of section 2 of the Displaced Persons (Debts Adjustment) Act, 1951 (LXX of 1951), the Central Government hereby directs that the following entry shall be added to the list of banking companies appended to the notification of the Government of India in the Ministry of Rehabilitation No. S.R.O. 609, dated the 27th March 1952, namely:—

“17. The Sind National Bank Limited.”

[No. 68(18)/51-Prop.]

MANMOHAN KISHAN, Asstt. Secy.

MINISTRY OF COMMUNICATIONS

(Posts and Telegraphs)

New Delhi, the 29th April, 1953.

S.R.O. 867.—In exercise of the powers conferred by sections 7 and 10 of the Indian Post Office Act, 1898 (VI of 1898), the Central Government hereby directs that with effect from the 1st May 1953, the following further amendments shall be made in the Indian Post Office Rules, 1933, namely :—

In the said Rules—

1. In rule 1—

(a) for the entries under the heading " Book, pattern and sample packets " the following entries shall be substituted, namely :—

" For the first five tolas or fraction thereof 1 anna.

For every additional two and a half tolas or fraction thereof in excess of five tolas six pies ".

(b) for the entries under the heading " Parcels " the following entries shall be substituted, namely :—

" Not exceeding 12 1/2 seers (1,000 tolas in weight)

For a weight not exceeding forty tolas Eight annas.

For every forty tolas or fraction thereof exceeding forty tolas Eight annas ".

2. In rule 5—

(a) under the heading " Printed papers (including newspapers and books)" for clause (A) the following clause shall be substituted, namely :—

" (A) For any part of the world served by the Foreign Post with the exception of Aden, Ceylon, Nepal, Pakistan and Portuguese India—

For every two ounces or fraction thereof One anna.

Provided that in the case of newspapers which for the purpose of the inland post are treated as registered newspapers, the rate of postage shall be, for each copy, six pies for every two ounces or fraction thereof".

(b) under the heading, "Business papers (legal and commercial documents)", for clause (A) the following clause shall be substituted, namely :—

" (A) For any part of the world served by the Foreign Post with the exception of Aden, Ceylon, Nepal, Pakistan and Portuguese India—

For a weight not exceeding eight ounces four annas.

For every additional two ounces or fraction thereof one anna."

(c) under the heading, " Sample packets " for clause (A) the following clause shall be substituted namely :—

" (A) For a weight not exceeding four ounces two annas.

For every additional two ounces or fraction thereof one anna"

[R.1-3/53] ¶

K. V. VENKATACHALAM, Dy. Secy. ■

MINISTRY OF WORKS, HOUSING AND SUPPLY

New Delhi, the 29th April, 1953.

S. R. O. 353—In pursuance of the provisions of rule 45 of the Fundamental Rules, the President hereby directs that the following further amendments shall be made in the supplementary Rules, published, with the order of the Government of India in the late Finance Department No. 104-CSR, dated the 4th February 1922, namely :—

In Part VIII of the said Rules, in Division XXVI-B, under ' Class of residence " G ",' the following entry shall be added in the Schedule at the end, namely :—

"(a) Two roomed flats in Vinay Nagar (built in 1953) 500"

and for the figures 2236 the figures 2736 shall be substituted.

[No. 3988-WII/53.]

K. K. SHARMA, Dy. Secy.

MINISTRY OF TRANSPORT

MERCHANT SHIPPING

New Delhi, the 24th April 1953

S.R.O. 869.—In exercise of the powers conferred by section 21 of the Indian Merchant Shipping Act, 1923 (XXI of 1923), and in supersession of the notification of the Government of India in the Ministry of Commerce No. 115-M.I/30, dated the 16th May, 1931, the Central Government hereby makes the following rules for the examination of and grant of Certificates of Competency to engine-drivers of sea-going steamships having engines of under 50 nominal horse-power and engine-drivers of sea-going motor-ships having engines of under 282 brake horse-power.

CHAPTER I

GENERAL

1. *Certificates of Competency.*—(1) Certificates of Competency as Engine-Driver of Sea-going Steam and Motor ships will be granted to those persons who pass the requisite examinations and otherwise comply with the requisite conditions.

(2) Such examinations shall be held whenever necessary at the Ports of Calcutta, Bombay and Madras.

2. *How to apply.*—A candidate for examination must apply on the proper form (Form Exn. 3a) obtainable from the Principal Officer, Mercantile Marine Department, at Bombay, Calcutta, and Madras. The Form properly filled in, together with the candidate's certificates of discharge, testimonials, and previous certificates, if any, must be lodged with the Principal Officer not later than three days before the examination is expected to take place.

3. *Testimonials as to Character.*—In addition to the usual certificates of discharge, a candidate will be required to produce satisfactory testimonials as to his experience, ability, sobriety and general good conduct, up to the period immediately preceding the date of his application.

4. *Testimonials as to service.*—(1) Testimonials as to workshop service which must be signed by the employer must testify to the candidate's ability and conduct and state the nature of work he was engaged on and the period of such service.

(2) Testimonials regarding service at sea must testify to the candidate's sobriety, experience and ability and general good conduct for the period of such service and must be signed by the Chief Engineer or by the Superintending Engineer, who shall state clearly the periods, if any, during which the applicant was on regular watch and in regular charge of a watch on the main engine and boilers.

5. *Fraud and Misrepresentation.*—Any person who makes, procures to be made, or assists in making, any false representation for the purpose of obtaining, for himself, or any other person, a certificate of competency is for each offence liable to be punished for cheating under Section 420 of the Indian Penal Code and also for knowingly giving false information to the public servant under Section 182 of the Indian Penal Code.

6. *Foreign Service.*—The testimonials of service of seamen serving in foreign-vessels, which cannot be verified in the Shipping Office, must be confirmed either by the Consul of the country to which the ships in which the candidate served belonged or by some other recognised official authority of that country, or by the testimony of some credible person on the spot having personal knowledge of the facts required to be established:

Provided that the mere production of such proofs shall not necessarily be deemed sufficient, case being decided on its merits, and that if in any case the sufficiency of the proofs given appear to be doubtful the point shall be referred to the Government of India.

7. *Gaps in service.*—The Examiners shall be particularly careful to ascertain that there are no gaps in the candidate's service which are not properly accounted for, before he is allowed to appear for examination.

8. *Age.*—If any doubt exists as to the age of a candidate he may be required to produce satisfactory evidence as regards the date of his birth.

9. *Sea Service.*—The sea service required by these rules shall be, except where otherwise stated, service performed in regular foreign-going or home-trade ships. Service performed in sea-going dredgers and tugs of the requisite horse-power may be accepted as equivalent to one-half the service performed in foreign-going or home-trade ships. Service performed in vessels which do not proceed to sea cannot be accepted as qualifying service.

10. *Foreigners must know English and Hindi.*—Foreigners must prove to the satisfaction of the Examiners that they can speak English and Hindi sufficiently well to perform the duties required of them on board an Indian vessel.

11. *Return of testi nonials, etc.*—A candidate's testimonials and other papers will be returned to him when the examination is finished, and if he passes he will receive a form (Form 16) authorising the Principal Officer to issue the certificate.

12. *Issue of certificates.*—Certificates of competency for engine-drivers of sea-going steam and motor ships shall be made and issued by the Government of India in the forms hereunto annexed. Each certificate shall be made in duplicate and one copy shall be delivered to the person entitled to the certificate.

13. *Failure.*—If a candidate fails in his examination he may not present himself for re-examination until he can produce proof of at least 3 months further qualifying service at sea, if the past examination showed that he might be expected to qualify in that time. Provided that if a candidate fails for want of practical knowledge, the period of sea service may be increased upto, but not exceeding, 6 months, at the discretion of the Examiner.

14. *Payment of fee.*—(1) A candidate for an examination, when making an application form Bxn. 3a, shall be required to pay an examination fee at the rate of rupees fifteen for each examination to the Principal Officer.

(2) If it appears that his service is not sufficient to entitle him to be examined or that his testimonials are unsatisfactory, he may be allowed to present himself again for examination without paying any further fee, when he has completed the requisite service or is able to produce satisfactory testimonials as the case may be. Alternatively the fee may be returned to him.

15. *Attempted Bribery.*—If a candidate offers or attempts to offer any gratification to any officer of the Directorate General of Shipping or the Mercantile Marine Department for the purpose of being shown any favour in the examination, he shall be regarded as having committed an act of misconduct and shall be rejected, and shall not be eligible for appearing in any examination for the next twelve months from the date of rejection. The candidate shall further render himself liable to a prosecution under the criminal law.

16. *Fee not to be returned on failure.*—If a candidate fails in his examination, no part of the examination fee shall be returned to him.

CHAPTER II

17. *Qualifications for Ordinary Certificates.*—(1) A candidate for a certificate of competency as engine-driver of a sea-going steam-ship must not be less than twenty-two years of age, and must :

- (a) have served an apprenticeship of at least three years in the making and repairing of steam-engines, and eighteen months at sea as engineer on regular watch on the main engines and boilers of a foreign-going or home-trade steam-ship having engines of not less than 50 nominal horse-power or three years in the case of steam dredgers or tugs with engines of 50 nominal horse-power or over ; or
- (b) have served at sea for at least five years in the engine room of a foreign-going or home-trade steam ships, having engines of not less than 30 nominal horse-power, of which three years must have been as Serang or principal tindal under a certificated engineer and, if the service was performed in a home-trade ship in addition to the said period of three years, at least six months' service as driver under such an engineer or must have served for at least ten years in sea-going dredgers or tugs with engines of 50 nominal horse-power or over, of which six years must have been as principal tindal or Serang and one year as driver ; or
- (c) have served at sea for at least one year as engine-driver on regular watch on the main engines and boilers of a foreign-going or home-trade steam-ship having engines of not less than 30 nominal horse-power or two years in the case of sea-going steam dredgers or tugs with engines of 50 nominal horse-power or over whilst holding a first class engine-driver's certificate of competency for steam-vessels granted under the Inland Steam-vessels Act, 1917 (1 of 1917) ; or the Harbour Craft Rules for the Port of Madras, 1935 or the Cochin Harbour Craft Rules, 1947 ; or
- (d) have served at sea for at least two years as engine-driver on regular watch on the main engines and boilers of a foreign-going or home-trade steam-ship having engines of not less than 30 nominal horse-power or four years in the case of sea-going steam dredgers or tugs with engines of 50 nominal horse-power or over whilst holding a second class engine-driver's certificate of competency for steam-vessels granted under the Inland Steam-vessels Act, 1917 (1 of 1917) or the Harbour Craft Rules for the Port of Madras, 1935 or the Cochin Harbour Craft Rules, 1947 ; or
- (e) (f) have served at sea for a period of not less than four years in the Engine Room of a foreign-going or home-trade steam-ship having engines of not less than 30 nominal horse-power of which period not less than two years must have been serviced as Serang or Principal tindal under a certificated engineer or a certificated sea-going

engine driver and not less than one year must have been served as a driver under a certificated engineer ; and

- (d) for an additional period of not less than one year in an engineering factory or workshop at the making, fitting and repairing of steam engines ; or
 - (f) have served at sea for at least two years as engine-driver on regular watch on the main engines and boilers of a foreign-going or home-trade steam-ship having engines of not less than 30 nominal horse-power or four years in a sea-going steam dredger or tug having engines of 50 nominal horse-power or over whilst holding a certificate of competency as engine-driver of a sea-going motor ship granted under the Indian Merchant Shipping Act, 1923 (XXI of 1923) ; or
 - (g) have served at sea for at least three years as engine-driver on regular watch on the main engines and boilers of a foreign-going or home-trade steam-ship having engines of not less than 30 nominal horse-power or six years in a sea-going steam dredger or tug having engines of 50 nominal horse-power or over whilst holding a first class engine-driver's certificate of competency for motor vessels under the Inland Steam-vessels Act, 1917 (I of 1917) ; or the Harbour Craft Rules for the Port of Madras, 1935 or the Cochin Harbour Craft Rules, 1947 ; or
 - (h) have served at sea for at least four years as engine driver on regular watch on the main engines and boilers of a foreign-going or home-trade steam-ship having engines of not less than 30 nominal horse-power or eight years in a sea-going steam dredger or tug having engines of 50 nominal horse-power or over whilst holding a second class engine-driver's certificate of competency for motor vessels granted under the Inland Steam-vessels Act, 1917 (I of 1917) or the Harbour Craft Rules for the Port of Madras, 1935 ; or the Cochin Harbour Craft Rules, 1947.
- (2) The candidate must also—
- (a) satisfactorily pass a *viva voce* examination as to the working of the various types of engines and boilers at sea ; the uses of the different fittings in engine-rooms and stoke-holds ; and, in particular, the use of b-line cocks, salinometers and blowing-off cocks, and the care of boilers in salt or foul water ;
 - (b) have a fair knowledge of the construction of steering engines, electric light and fan engines, and the construction and uses of evaporators, feed heaters and feed-filters.
 - (c) have a fair knowledge of the effects of forced draft, and be able to explain the art of economical stoking and prevention of smoke ;
 - (d) be able to name the principal parts of oil-engines (internal combustion engines), and understand how such engines work ; and
 - (e) be able, if required, to show his practical qualifications by actually working the engines of a steamer for such period as may be prescribed after fulfilling the other tests to which he may be subjected ;
 - (f) know the danger resulting from leakage from fuel oil tanks and burners, and must understand the precautions to be taken against explosion. He must know how to deal with fire should it break out ;
 - (g) know the lay out of the oil fuel system, and how to operate it efficiently.

(3) Where a candidate can produce proof of technical education and is prepared to appear for a written examination in Engineering knowledge, Mathematics and free hand sketching, the period of sea service, may be reduced to three quarters of that required in Rule 17 (1).

18. *Qualifications for Motor Certificates—Age and qualifications.*—(1) A candidate for a certificate of competency as motor engine-driver of a sea-going motor ship must be not less than 22 years of age ; and must possess one of the following qualifications, namely :—

(a) he must have—

- (i) served for not less than three years as an apprentice or journeyman in an engineering factory or workshop in the making, fitting, and repairing of engines, and for not less than two years of such period, he must have been employed in the making, fitting, and repairing of internal combustion engines ; and
- (ii) served at sea for an additional period of not less than eighteen months in a foreign-going or home-trade motor ship, having engines of not less than 170 brake horse-power, or of not less than three years in a sea-going motor dredger or tug with engines of not less than 232 brake horse-power and throughout such period he must have been employed on regular watch on the main engines of such motor ship, dredger, or tug ; or

- (b) he must have served at sea for a period of not less than five years in the engine room of a foreign-going or home-trade motor ship having engines of not less than 170 brake horse-power of which period not less than three years must have been served as serang or principal tindal on regular watch under a certificated engineer or a certificated sea-going engine-driver and not less than six months must have been served as a driver under a certificated engineer; he must have served at least for a period of not less than ten years in the engine room of a sea-going motor dredger or tug with engines of not less than 282 brake horse-power, not less than six years of which period must have been served as serang or principal tindal and not less than one year as driver:

Provided that of the aforesaid periods of service as serang or principal tindal, a period not exceeding one-half may be served in a sea-going steamship having engines of not less than 30 nominal horse-power or a sea-going dredger or tug having engines of not less than 50 nominal horse-power, in lieu of in a motor ship; or

- (c) he must have served at sea for a period of not less than one year on a foreign-going or home-trade motor ship, having engines of not less than 170 brake horse-power, or for a period of not less than two years on a sea-going motor dredger or tug with engines of not less than 282 brake horse-power and throughout such period he must have been employed as driver on regular watch on the engines of such motor ship, dredger or tug, and have held a Certificate of competency as a first-class engine driver for motor vessels granted under the Inland Steam-vessel Act, 1917 (I of 1917), or the Harbour Craft Rules for the Port of Madras, 1935, or the Cochin Harbour Craft Rules, 1947; or
- (d) he must have served at sea for a period of not less than two years on a foreign-going or home-trade motor ship having engines of not less than 170 brake horse-power, or for a period of not less than four years on a sea-going motor dredger or tug with engines of not less than 282 brake horse-power, and throughout such period he must have been employed as driver on regular watch on the engines of such motor ship, dredger or tug, and have held a certificate of competency as a second class engine driver for motor vessels granted under the Inland Steam-vessels Act, 1917 (I of 1917); or the Harbour Craft Rules for the Port of Madras, 1935 or the Cochin Harbour Craft Rules, 1947; or
- (e) he must have served—
- (i) at sea for a period of not less than four years in the engine room of a foreign-going or home-trade motor ship having engines of not less than 170 brake horse-power of which period not less than two years must have been served as serang or principal tindal under a certificated engineer or a certificated sea-going engine driver and not less than one year must have been served as a driver under a certificated engineer; and
- (ii) for an additional period of not less than one year in an engineering factory or workshop at the making, fitting and repairing of motor engines; or
- (f) he must have served at sea for a period of not less than two years as engine driver on regular watch on the main engines of a foreign-going or home-trade motor ship having engines of not less than 170 brake horse-power or four years in a sea-going motor dredger or tug having engines of not less than 282 brake horse-power, and throughout such period he must have held a certificate of competency under section 16 of the Indian Merchant Shipping Act, 1923 (XXI of 1923), as engine driver of a steamship; or
- (g) he must have served at sea for a period of not less than three years as engine driver or regular watch on the main engines of a foreign-going or home-trade motor ship having engines of not less than 170 brake horse-power or six years in a motor dredger or tug having engines of not less than 282 brake horse-power and throughout such period he must have held a certificate of competency as a first class engine driver for steam vessels granted under the Inland Steam Vessels Act, 1917 (I of 1917) or the Harbour Craft Rules for the Port of Madras, 1935, or the Cochin Harbour Craft Rules 1947; or
- (h) he must have served at sea for a period of not less than four years as engine driver or regular watch on the main engines of a foreign-going or home-trade motor ship having engines of not less than 170 brake horse-power or eight years in a sea-going motor dredger or tug having engines of not less than 282 brake horse-power and throughout such period he must have held a certificate of competency as a second-class engine driver for steam vessels granted under the Inland Steam Vessels Act, 1917 (I of 1917) or the Harbour Craft Rules for the Port of Madras, 1935; or the Cochin Harbour Craft Rules, 1947.

(2) The candidate must satisfactorily pass a *viva voce* examination on the working of the various types of internal combustion engines and be able to name the principal parts of the machinery.

(3) The candidate must know what attention is required by the various parts of the machinery; understand the use and management of the different valves, cocks, pipes and connections; and be familiar with the various methods of supplying air and fuel to the cylinders.

(4) The candidate must be able to describe the chief causes which may make the engine difficult to start and to explain how he would proceed to remedy any defects connected therewith; he must also be able to show that he understands the mechanism of the starting and reversing arrangements and that he is competent to deal with defects therein.

(5) The candidate must be able to overhaul the engine, to adjust the working parts and to put the engine together again in good working condition. He must also understand how to make good the result of ordinary wear and tear on the machinery and how to correct defects from accidents.

(6) The candidate must be familiar with the nature and properties of the various fuel oils used in internal combustion engines. He must understand what is meant by "flash point".

(7) The candidate must know the danger resulting from leakage from the fuel oil tanks and must understand the precautions to be taken against explosion. He must also be able to take the necessary precautions to guard against the escape of inflammable vapour from the vaporiser, when the engines are stopped. He must know how to deal with fire should it break out.

(8) The candidate must possess a working knowledge of the management of auxiliary steam boilers and machinery connected therewith, *vis.*, electric light engines, steering engines, evaporators and pumps.

(9) The candidate must also be able, if required, to show his practical knowledge by actually working the engines of a motor-vessel in the presence of the examiner.

(10) Where a candidate can produce proof of technical education and is prepared to appear for a written examination in Engineering Knowledge, Mathematics and free hand sketching, the period of sea service, may be reduced to three quarters of that required in rule 18 (1).

Explanation.—For the purpose of these rules the expressions "home-trade ship" and "Foreign-going ship" have the meanings respectively assigned to them in section 2 of the Indian Merchant Shipping Act, 1923 (XXI of 1923).

19. Workshop service other than that mentioned in rule 17 (a) and 18 (a) may be accepted if it is considered useful training for a sea-going engine driver of steam or motor vessels as the case may require but each case will be considered on its merits. For every twelve months of each service accepted the applicant shall have performed at least an additional three months service on marine engines (steam or motor) either in the works or at sea on regular watch on the main propelling machinery or on day work; and a longer additional period may be required if the deficient character of the service warrants further compensation.

Service as a journeyman will be accepted as apprenticeship but no time served before the age of 15 years will be accepted.

Time spent at an approved technical institution, daywork at sea, and sea-service performed in lieu of deficient workshop service, will be accepted on the same conditions as are laid down for sea-going engineers.

GOVERNMENT OF INDIA

CERTIFICATE OF COMPETENCY

AS

ENGINE-DRIVER No.

OF A SEA-GOING STEAMSHIP

(Under Act XXI of 1923)



To

WHEREAS it has been duly reported that you have been found qualified to fulfil the duties of Engine-Driver of a Sea-going Steamship having engines of under 50 Nominal Horse-power

the President of India does hereby, in pursuance of Act XXI of 1923, grant you this Certificate of Competency as ENGINE-DRIVER.

Dated this.....day of,.....19.....

Countersigned

Registered in the Directorate General
Shipping, Bombay.

Secretary to the Government of India
Director General of Shipping.

Bearer.....

ADDITIONAL QUALIFI-
CATIONS

Son of.....by caste.....
Date *and place of Birth showing Village, Thana and
District.....

Residence, showing Village, Thana and District.....

Height.....

Personal description, stating particularly any Permanent
Marks or Scars.....

Signature of Bearer.....

Any Engine-Driver who fails to deliver up a Certificate which has been cancelled or suspended is liable to a penalty not exceeding Rs. 500.

N.B.—Any person other than the owner thereof becoming possessed of this Certificate is required to transmit it forthwith to the Principal Officer, Mercantile Marine Department, Bombay/Calcutta/Madras.

Issued at.....
on the.....day of.....19....

*If not known exactly, must be stated on the best information or evidence.

GOVERNMENT OF INDIA CERTIFICATE OF COMPETENCY

AS

ENGINE-DRIVER No.....
OF A SEA-GOING MOTOR SHIP
(Under Act XXI of 1923)



TO.....

WHEREAS it has been duly reported that you have been found qualified to fulfil the duties of Engine-Driver of a Sea-going Motor Ship having engines not exceeding 282 Brake Horse-power

he President of India does hereby, in pursuance of Act XXI of 1923, grant you this Certificate of Competency as ENGINE-DRIVER.

Dated this.....day of.....

Countersigned
Registered in the Directorate General
of Shipping, Bombay.

Secretary to the Government of India
Director General of Shipping

Bearer.....

ADDITIONAL QUALIFI-
CATIONS

Son of.....by caste.....

Date *and place of Birth showing Village, Thana and
District.....

Residence, showing Village, Thana and District.....

Height.....

Personal description, stating particularly any Permanent
Marks or Scars.....

Signature of Bearer.....

Any Engine-Driver who fails to deliver up a Certificate which has been cancelled or suspended is liable to a penalty not exceeding Rs. 500.

N.B.—Any person other than the owner thereof becoming possessed of this Certificate is required to transmit it forthwith to the Principal Officer, Mercantile Marine Department, Bombay/Calcutta/Madras.

Issued at.....
on the.....day of.....19.....

* If not known exactly, must be stated on the best information or evidence.....

[No. 104-M.A. (11)1320]

S. K. GHOSH, Dy. Secy.

MINISTRY OF LABOUR

New Delhi, the 28th April, 1953

S.R.O. 870.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the management of the Amlabad Colliery and their workmen.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT DHANBAD

REFERENCE NO. 35 OF 1951

PRESENT : SHRI L. P. DAVE, B.A., LL.B.—*Chairman.*

PARTIES : The management of the Amlabad Colliery

AND

Their workmen.

APPEARANCES : Shri M. K. Mukherjee, Pleader, assisted by Shri R. N. Chowdhury,
Labour Officer—*for the management.*Shri S. S. Mukherjee, Pleader, Dhanbad,—*for the workmen.*

AWARD

By Government of India, Notification No. LR. 2 (359), dated 3rd/7th December 1951 the dispute between the management of the Amlabad Colliery and their workmen regarding the dismissal of Shri Madan Mohan Mishra was referred to this Tribunal. Usual notices were issued to the parties and they filed their written statements. Before the matter could be heard by my predecessor Shri S. P. Varma, he retired and thereafter the matter has been referred to me by the Government of India, Ministry of Labour, No. LR. 2 (395), dated 4th February 1953.

2. The case of the workmen is that Shri Madan Mohan Mishra was an old employee of the management and was working as a Mining Sirdar from 1943 till the date of his dismissal on 1st December 1949. They alleged that on 21st November 1949, when Madan Mohan Mishra had gone underground on duty, he found some corrugated iron sheets and brattice cloth lying scattered near the pit bottom and he ordered Chatu Rajwar to gather all the scattered articles and keep them away from the pit bottom to guard against any possible accident. After giving this order, Madan Mohan Mishra came up to the surface and after sometime he found that Chatu Rajwar with one Harsha came up to the surface bringing along with them the corrugated iron sheets and brattice cloth. He was very much angry and annoyed with them and scolded them loudly. They told him that they had misunderstood his directions and had brought up the articles for keeping them at some place on the surface. He realised that these persons had acted under some misapprehension and so he ordered them to take the materials down at once and keep them at a convenient place underground. Hearing the loud voice of Madan Mohan Mishra, one Dhumun Shaw who was a watchman came there and prevented the materials from being lowered and made a false and malicious report against Madan Mohan Mishra to the Manager, implicating him of a theft of the articles. This report of Dhumun Shaw against Madan Mohan Mishra was totally false. He had taken a vindictive attitude against Mishra, because of some ill-will and old grudge against him. A charge-sheet was issued by the management on 22nd November 1949. Madan Mohan Mishra was also suspended. He gave a reply, explaining the circumstances in full. The management, without holding any enquiry or considering the explanation of Madan Mohan Mishra, dismissed him by their letter dated 1st December 1949. Madan Mohan Mishra was also prosecuted on charges of theft before a Magistrate, but he was acquitted and thereafter he requested the management several times to reinstate him in service but they did not do so. Madan Mohan Mishra was an active member of the Union and the management was very much annoyed against him on that account. The Union therefore urged that Madan Mohan Mishra was dismissed without proper enquiry; that the charge sheet against him was unreliable and that their action of dismissal was arbitrary, high-handed and opposed to natural justice and he should therefore be reinstated in service and awarded compensation for the wrongful dismissal.

3. The management by their written statement contended that Madan Mohan Mishra was caught on 21st November 1949 in the actual act of attempting to steal the corrugated iron sheets and a piece of brattice cloth. Thereupon a charge-sheet was served on him to which he gave a reply. After due enquiry, the reply was considered to be unsatisfactory. The management was also satisfied that he was guilty of the charge brought against him and he was thereupon dismissed. The management acted in a bona fide manner in doing so. The fact that he was acquitted by a Criminal Court would not mean that the management was not justified in taking action against him or that the action that was taken was wrongful, mala fide or erroneous. The management then urge that the circumstances show that Madan Mohan Mishra had committed several breaches of mining regulations as detailed in the written statement. He was entirely unfit to carry on the work of an overman and should not be reinstated. The management then urged that the allegation that the management wanted to dispense with Madan Mohan Mishra's services for union activities is false. Lastly it is urged that Madan Mohan Mishra was an overman, who is an official of the company and a member of the supervisory staff and that he is neither a manual worker nor a clerical worker and as such not a workman and his dispute with the management is not an industrial dispute. The reference therefore is bad in law.

4. Following issues were framed :—

1. Whether Madan Mohan Mishra was a workman ?
2. If not, is this reference maintainable ?

3. Is it proved that the discharge of Shri Madan Mohan Mishra was legal ?
4. Is he entitled to be reinstated ?
5. What compensation, if any, is he entitled to ?
5. My findings are :

1. No. 2. No. 3. Yes. 4. No. 5. Nil.

6. This dispute relates to the dismissal of one Madan Mohan Mishra who was dismissed by the management by an order dated 1st December 1949. Prior to this, he was served with a charge-sheet on 22nd November 1949, wherein it was alleged that he was found attempting to rob the management of corrugated iron sheets and a piece of brattice cloth from Pit No. 2 on the night of the preceding Sunday. He submitted an explanation on 25th November 1949 denying the allegation of theft. The management however held that he was guilty and dismissed him.

7. The first objection raised by the management against the reference is that Madan Mohan Mishra was not a workman as defined in Section 2 (s) of the Industrial Disputes Act, 1947 and hence the dispute regarding his dismissal could not amount to an industrial dispute as defined in Section 2 (k) of the Act. It is true that Section 2 (k) defines an industrial dispute as meaning an industrial dispute which is connected with the employment or non-employment of 'any person' but the term 'any person' used in this definition has been held to be meaning a workman. See the full bench case of "United Commercial Bank Ltd. Vs. Kedarnath Gupta", published in 1952, Vol. I, L.L.J. at page 782 and the case of H. K. Sen and others Vs. Labour Appellate Tribunal of India and others published in 1953, Vol. I, L. L. J., at page 6. As a matter of fact, it was not disputed before me that unless Shri Mishra was a workman as defined in Section 2 (s) of the Industrial Disputes Act, 1947, there could not be an industrial dispute as defined in Section 2 (k) of the Act.

8. The important question therefore for consideration is whether Madan Mohan Mishra was a workman as defined in Section 2 (s) in the Industrial Disputes Act, 1947. The definition of workmen given in this section requires that a person to be a workman must be doing manual or clerical work whether skilled or unskilled ; that is the most important criterion for a person for being held a workman would be that he must be employed to do manual or clerical work. If he is not employed to do manual or clerical work, he could not be said to be a workman. A person who is employed to do supervisory work would not fall within the definition and hence a person whose duties are mainly supervisory cannot be held to be a workman.

9. It is an admitted position that at the time of his dismissal, Shri Mishra was employed as an overman sirdar. In Para. I of the written statement of the Union, it has been said that Shri Mishra had obtained the mining sirdarship certificate in 1943 and was since then serving as a Mining Sirdar till the date of his dismissal on 1st December 1949. In his deposition, he has said that in 1949 he was working as an overman sirdar. In Para. II of their written statement, the management have also said that immediately prior to his dismissal, Shri Mishra had been an overman. Shri Bhabatosh Daripa, who is a clerk in the Amlabad Colliery and who was examined in this case on behalf of the management, has also stated that Madan Mohan Mishra was working as an underground overman. Thus there can be no doubt that Shri Madan Mohan Mishra was at the time of his dismissal an overman sirdar and we shall have to consider whether as such his duties were to do manual or clerical work or whether he was to do only supervisory work.

10. In his deposition, Sri Daripa, who, as I said above, has been examined on behalf of the management, has said that Madan Mohan Mishra had to do no manual work nor to do any clerical work but he was only to supervise the work done by other workmen. In his cross-examination, he said that he did not know whether it was part of the duty of the overman to strike parts of the roof to see that it was safe. He further said that overmen have to submit their reports of the inspection, but if they were illiterate, the reports were written by others and the overman puts his thumb marks thereon. Madan Mohan Mishra in his deposition has said that as overman Sirdar, his duties were to go underground and test the roof by striking with a stick and see that it was safe and he had also to write a report everyday about the condition of a mine. It was argued from this that Madan Mohan Mishra had to do manual work and also clerical work because he had to strike the roof with a stick and see that it was safe and he had to write a report everyday. In my opinion, these contentions cannot be accepted.

11. The duties of a overman sirdar or competent persons appointed under Regulation 70 of the Indian Coalmine Regulations are defined in bye-laws 37 to 56 of the bye-laws for Coalmines framed under Section 32 of the Indian Mines Act, 1923. The Indian Mines Act, 1923 is now no longer in force and the Indian Mines Act, 1952 is in force. It may however be noted that this new Act has come into force with effect from 1st July 1952 and till then, the old Act of 1923 was in force. When the present dispute arose, the old Act was in force. I shall therefore refer to the old Act and the bye-laws, regulations and rules framed under the old Act, and consider whether the duties of an overman were to do manual work or supervisory work.

12. Regulation 70 requires *inter alia* that a competent person or persons having the prescribed qualifications and having been appointed by the Manager to inspect every part of the mine should ascertain conditions thereof, and the result of such inspection should be recorded in a book kept

for the purpose. A person before he could act or be appointed as an overman sirdar or competent person must have the prescribed qualifications and must obtain a certificate from the Mines Department. Under Regulation 25, the Manager of every mine has to appoint in writing such number of competent persons as would be sufficient to secure a thorough supervision of all the operations in the mine, and the enforcement of the requirements of the Mines Act and of the Regulations, Rules, and Bye-laws made thereunder. The Manager has also under this regulation to make over to a person so appointed a copy of the regulations, rules and bye-laws which affect him, at the time of his appointment. The management have produced the book called 'Authorisation Book' for overman and sirdars; and counterfoil No. 9 thereof shows that Madan Mohan Mishra was appointed as a sirdar on 10th February 1947. At that time, he was given a copy of the extracts of the regulations, rules and bye-laws which affected him and (i.e., Madan Mohan Mishra) signed this in acknowledgment of the receipt of the above extracts. This form is a form of appointment of competent persons under Coalmines Regulation 25. It would thus be clear that Mishra was appointed as an overman Sirdar or competent person under Regulation 25; and under Regulation 70, he had to make an inspection of the mine before commencement of work under Regulation 70.

13. The duties of an overman sirdar or competent person are, as I said above, defined under bye-laws 37 to 56. The different duties enumerated under these bye-laws clearly go to show that the duties are merely supervisory and that he is not ordinarily supposed to do any manual or clerical work. As I mentioned above, Regulation 25 shows that a competent person has to be appointed to secure a thorough supervision of the operations in the mine and enforcement of the requirements of the Act, the regulations etc. *Prima facie*, therefore, the appointment of an overman, sirdar, or a competent person has to be made for doing supervision work and for seeing that the provisions of the Mines Act and Regulations, Rules and Bye-laws thereunder are properly enforced. Bye-law 37 lays down that the overman shall have responsible charge and control of the part of the mine assigned to him by the Manager. Bye-law 38 requires the overman to make inspections in the district of the mine assigned to him and make a report as required by Regulation 70 and also lays down that he should to the best of his power see that the workmen under his charge understand and carry out their respective duties under the Act and under the Regulations and Rules and Bye-laws made thereunder. Under Bye-law 39, the overman has to see that sufficient supplies of necessary articles required for the safe working of the mine are kept in convenient places and shall report any deficiency to the superior officer. Under Bye-law 40, he has to see that all stoppings, brattices, doors etc. are maintained in good condition. Under Bye-law 41, he has to take care that any dangerous operation is carried out with due precautions, and if necessary cause the place to be fenced. He has further to cause the entrance to a dangerous place to be properly fenced. Under Bye-law 42, he has to see that the roofs and sides of all travelling roads and working places in his district are made and kept secure. Under Bye-law 43, he has to see that the man-holes on the engine place are kept clear and in good condition. Bye-law 44 requires him to personally inspect any part of his district reported unsafe and to cause any defect or danger to be remedied without delay etc. Under Bye-law 45, he has, if he finds dangerous accumulation of gas, to make a report at once to the Manager. Under Bye-law 46, he has to see that drags or back-stays are provided and regularly used behind tubs ascending inclines and that sufficient supply of suitable sprags is provided. Under Bye-law 47, he has to point out their working places to the workmen under his charge or cause the same to be indicated to them, and if he finds any person in a place other than the one assigned to him, he may order such person out of the mine. Bye-law 48 lays down that he cannot leave the mine until he has finished the inspection required by Regulation 70 and any other duties which he may be required to perform until he is relieved by a duly appointed substitute. Under Bye-law 49, he is required to see that the provisions of the regulation and bye-laws with respect to the use of explosives are strictly observed. Under bye-law 50, he is not to permit any person to remain in the mine after the close of each day's work. Bye-law 51 requires him not to leave the mine if the work is by succession of shifts without conferring with the official succeeding him. Under Bye-law 52, if any case of damage to safety lamp is reported to him, he has to see and record in his report the cause and nature of the damage. Bye-law 53 requires him to see that brattice or air-pipes required to be used for the ventilation of the working places are kept sufficiently advanced to ensure that they reach the working places. Under Bye-law 54, it is the duty of the overman to stop the use of any rope, chain, signal etc. which he finds to be in an unsafe condition. Under bye-law 55, he has the power to send out of the mine any work-person under his authority who infringes or attempts to infringe any of the provisions of the Act or Regulations, Rules or Bye-laws made thereunder. Bye-law 56 requires him on receipt of notice of an accident to any person to proceed at once to the place of accident, inspect the place, supervise the rescue operations and report or send notice of the accident to the Manager.

14. It would be clear from the above bye-laws which deal with the duties of an overman, Sirdar or other competent person that all the duties of an overman are supervisory. None of these duties require any manual or clerical work to be done by him.

15. It was however argued on behalf of the workmen that an overman has occasionally to strike the roof with a stick to see that it is safe and this means that he has to do manual work. As a matter of fact, the Union does not allege that the overman has to do any other manual work.

It is true that an overman may have occasionally to strike a roof with a stick to see that it is safe, but this would not mean that he is supposed to do manual work. The striking of the roof with a stick is with a view to ascertaining whether it is safe or not. His main duty is supervision and his includes verification as to whether the roof is safe or not. For this purpose, the roof may have to be struck by a stick ; but it is not necessary that the overman must himself do it. He can get the roof struck by someone else. Striking of the roof is a means to an end, namely seeing whether the roof is safe or not. In my opinion, the fact that the overman may have to strike a roof with a stick to see that it is safe does not necessarily mean that he has ordinarily to do manual work. His main duties, as I said above, are supervisory. One of the items of supervision is to see that the roof is safe. He can do this by a visual inspection or may on some occasions strike it with a stick ; but, as I said above, this striking need not be done by him personally and secondly the striking is done for the purpose of inspection of the safety of the roof and it would not mean that it is his ordinary duty.

16. In this connection, I may refer to the case of Ford Motor Co. of India Ltd. Vs. their workmen reported in 1950, Vol. II, L.L.J., page 1149 where a foreman was held to be not a workman because his work was only supervisory. It was further held that simply because at times he had to do some work with his own hands, it could not be said that he had to do manual work. This decision was upheld in appeal and the Appellate Court decision is reported at 1951, Vol. I, L.L.J., page 167 (W.C.L. Raymond Vs. Ford Motor Co., Ltd.). In the course of this judgment, it was observed that if in the course of supervision, a person has to do anything by his own hand by way of testing, it could not be said to be manual work, because that was a part of his work as a supervisor.

17. Shri Madan Mohan Mishra as an overman had to do supervisory work, and in doing so, he may have had to strike the roof with a stick (or get the roof struck by someone with a stick) ; but that would not mean that he had to do manual work. The striking of the roof would be for the purpose of supervision and checking and would not make him a manual labourer. In my opinion, therefore, the mere fact that Madan Mohan Mishra was at times required to strike the roof with a stick for ascertaining whether it was safe would not make him a manual worker. As I said above, admittedly he had to do no other manual work.

18. It was then argued that Madan Mohan Mishra had to write reports, and this would mean that he had to do clerical work. I cannot also accept this contention. In the first place, the writing of a report is only to mention what he sees and observes while doing the supervision work. His main duties were supervision and the submission of the report was only incidental. A person, who has to write reports at times, could not be said to be doing clerical work. In this connection, I may also mention that an overman, sirdar or a competent person need not necessarily be literate. Actually it is admitted by Madan Mohan Mishra that if an overman was illiterate, he would get his report written by someone else and put his thumb mark thereon. These reports are to be written in a book kept in a printed form. In other words, an overman need not be literate and need not himself write a report. The book of authorisation above referred to (in which the order of appointment of Madan Mohan Mishra is found at page 9) contains the appointments of several other persons as competent persons and some of them have put their thumb marks (Pages 11, 12, 13, 19, 24 and 25 of the above book). Thus the fact that Madan Mohan Mishra had to submit his reports about the inspection done by him would not mean that he had to do clerical work. That being so, he cannot be held to be a workman on this ground.

19. Shri Mukherjee who appeared on behalf of the Union relied on two other factors to show that Mishra must be held to be a workman. The first was that he used to get overtime allowance for doing work on days of rest. From this he argued, relying on Para. 4 of the Joshi Agreement, that he must be held to be a workman. Para. 4 of the Joshi Agreement lays down that payment of overtime work should be $1\frac{1}{2}$ times the normal rate and should be calculated as stated therein. Explanation A to this Para. states that the above mentioned payments for overtime work for monthly rated staff was payable firstly to all categories of underground workers upto and including the overman and secondly to all categories of surface workers including office supervisory staff. This only means that an overman was entitled to overtime payment but it would not mean that he was a workman as defined in Section 2 (3) of the Industrial Disputes Act, 1947. The above clause in the Joshi Agreement defines as to what workers were entitled to overtime payment ; and laid down that underground workers upto and including overman were held to be so entitled. That means that an underground overman was entitled to overtime work for working on Sundays or rest days but it did not necessarily mean that an overman was a workman as defined in the Industrial Disputes Act, 1947.

20. It was then argued that Madan Mohan Mishra as an overman was according to the case of the management required to take permission of the Manager to go underground on days of rest and that this would mean that he was a workman. In this connection, I was referred to Regulation 149 and proviso thereto. That Regulation lays down that a competent person or persons appointed by the Manager should keep a correct record of the number of persons going underground daily, and returning therefrom etc. The proviso lays down that the Regulation was not to apply in the case of any person appointed to carry out the duties of superintendence, management, or control

This would mean that in the case of such persons, a record need not be kept when they went underground or returned therefrom. It would not however mean that a person regarding whom no such record need be kept must necessarily be held to be a workman. In my opinion, this regulation does not help the case of the workmen in holding that Madan Mohan Mishra was a workman.

21. On behalf of the management, reliance was placed on Rule 12 of the Indian Mines Rules which states that the persons mentioned therein should be deemed to be persons holding positions of supervision or management or employed in a confidential capacity within the meaning of Section 24 of the Act. The persons mentioned therein include an official in charge of any mine or part of a mine. An overman is an official in charge of a part of a mine and it was therefore argued that he must be deemed to be a person in the position of supervision or management. Rule 12 however says that persons mentioned therein are to be persons holding positions of supervision or management within the meaning of Section 24 of the Indian Mines Act. That section lays down that nothing in Sections 22A, 22B, 22C, 23 and sub-section 4 of 23B would apply to persons who may by rules be defined to be persons holding positions of supervision or management or employed in a confidential capacity. These Sections 22A, 22B, 22C, 23 and sub-section 23B relate to the weekly days of rest, hours of work above and below ground, prohibition of employment of persons who may have done work in any other mine in the preceding 12 hours etc. Reading rule 12 with the provisions of Sections 24 and 22A, 22B and 22C and 23 and 23B of the Indian Mines Act, 1923, it would only mean that the rules regarding weekly days of rest, hours of work etc. would not apply to an overman. It cannot however necessarily mean that an overman is a member of the supervisory staff for all purposes, nor would it mean that he is not a person who has to do manual or clerical work.

22. On the whole, I am satisfied that an overman is not to do any manual or clerical work and could not be said to be a workman as defined in Section 2(s) of the Industrial Disputes Act, 1947. As I said above, it is an admitted fact that Madan Mohan Mishra was an overman sirdar and except his duties of striking the roof at times to see that it was safe and the writing of reports, he is not alleged to have to do any manual or clerical work. The above duties, as I showed above, were parts of his duties of supervision. In my opinion his duties were purely supervisory and neither manual or clerical and he could not be said to be a workman. That being so, the question of his non-employment could not be said to be an industrial dispute. The result would be that at this Reference would not be competent, as it does not raise an industrial dispute. It would fail on this ground.

23. On merits also, I think that the reference must fail. Madan Mohan Mishra, as I said above, was dismissed by the management by a letter dated 1st December 1949. Prior to this, he was served with a charge-sheet on 22nd November 1949 and he replied to it on 26th November 1949. It is said that he was involved in an attempt to rob the colliery of corrugated iron sheets and a piece of brattice cloth. This charge was according to the management, proved, with the result that he has been dismissed. Madan Mohan Mishra denies that he had tried to steal the above articles. It was urged on behalf of the workmen that there was no sufficient evidence to hold the above charges proved. It was also urged that Madan Mohan Mishra was falsely involved by Dhunmun Shaw with whom he had a previous quarrel. It has also been urged in the written statement of the workmen that Madan Mohan Mishra was an active member of the Union and the management was very much annoyed on that account and that the management wanted to dispense with his service only because of his Union activities.

24. The leading case on the question of the powers of the management to dismiss an employee is the case of Buckingham and Carnatic Mills Ltd. and their workers reported at 1951, Vol. II, L.L.J., page 314. The Labour Appellate Tribunal held that this question had come for consideration before different Tribunals from time to time and their findings were not unanimous and the Appellate Tribunal thereupon proceeded to discuss the correct principles to be observed in such cases. In Para. 8 of their judgment (page 317, column 2) the Tribunal has laid down that there are three types of cases in which the service of an employee can be terminated. The last type was dismissal for misconduct. The Tribunal observed that in all cases, the requirement of bonafides was essential. The termination of service in colourable exercise of the power or as a result of victimisation or unfair labour practice or of caprice, should be prevented; as otherwise, some of the fundamental rights and principles would be violated. Arbitrary conduct or unnecessary harshness on the part of the employer, judged by the normal standard of a reasonable man may be cogent evidence of victimisation or unfair labour practice. Paras. 10, 11 and 12 of the judgment (at page 318) lay down the principles which have to be considered when a person has been dismissed for alleged misconduct. It has been observed in Para. 11 that the power of the management to direct its internal administration which includes the enforcement of discipline of the personnel cannot be denied. But this power has to be subjected to certain restrictions. At the same time, undue interference by a Tribunal with the administration and management should not be encouraged. It has then been observed that it would be open to the Tribunal to examine the findings of the management on the charge of misconduct to assure itself that there is evidence to support the findings and that the decision of the management is a possible view on the evidence before it. In such cases, the Tribunal should refrain from substituting its own judgment for the judgment of the management; as in such matters the Tribunal does not act like a court of appeal, but rather as a supervisory body. Lastly it is observed that the decision

of the management in relation to the charges against the employee will not prevail if (a) there is a want of bonafides, or (b) it is a case of victimisation or unfair labour practice or violation of the principles of natural justice, or (c) there is a basic error of facts, or (d) there has been a perverse finding of the materials.

25. As I said above, the allegation of the workmen is that Madan Mohan Mishra was an active member of the workers' Union and the management was very much annoyed with him on that account and that the Union believed that the management wanted to dispense with his services because of his union activities only. In my opinion, these allegations do not appear to be true. It is no doubt true that Madan Mohan Mishra in his deposition has stated that he was a member of the workers' union and that in the absence of the General Secretary of the Union, he used to go to the labour welfare officer if there was any complaint of any worker and used to get the matter settled by him. In his cross-examination, he says that he could not say as to how many members there were in the above Union at the time he was working in the colliery nor could he say how many members were in the executive committee of that Union. He further said that he could not give the names of all the members of the Executive Committee but that he could give only two or three. He admitted that he was not a member of the Executive Committee nor an office-bearer of the Union. He could not also say whether the Union has or had an Assistant Secretary or not. He could not cite any instance where he had gone to the management or to the Labour Welfare Officer on behalf of any worker to get their grievances settled except that he had gone to the Labour Welfare Officer in connection with the grievances of one Bishun Sahai and one Munilal Sahai regarding the payment of leads to these two workmen about 4 years ago. He could not give details of the dispute as the matter was old. Lastly he said that the Union was keeping books showing the list of its members but they did not show that he was a member of the above Union. His evidence thus shows that the allegations that he was taking an active part in the Union or that the management wanted to dismiss him because of his Union activities, cannot be believed. As admitted by him, the books of the Union do not show that he was even a member of the Union. When a person is dismissed by the management, it is easy to allege that he has been victimised because of his taking active part in Union activities. This fact has however got to be proved like any other fact and in my opinion, there is no evidence to prove this. Madan Mohan Mishra's own evidence shows that he must not have been even a member of the Union, much less that he was an active member. He was not a member of the Executive Committee nor an office-bearer of the Union. He could not even say whether the Union had an Assistant Secretary or not. He alleged that in the absence of the General Secretary, he used to go to the Labour Welfare Officer to get the workers' grievances redressed but normally this would have been the duty or work of an Assistant Secretary. He could not cite any instance of his having approached the management or the Welfare Officer excepting one solitary case which he alleges happened 4 years ago, and about this, he could not give any details. If he had been an active member of the Union as alleged, he could have cited a number of instances where he did active work on behalf of the Union. Other evidence could have been produced to show that he was taking an active part in the Union activities. No office-bearer of the Union nor any workman has been examined to show that he was taking part in the union activities. As I said above, it is easy for a person to allege that he was taking active part in the Union activities; but in the absence of cogent evidence, the allegation cannot be held proved. I may repeat that by his own admission, it is doubtful whether he was even a member of the Union. I may then state that neither in his reply to the charge-sheet nor in any of his subsequent applications has he alleged that he was dismissed or victimised because of the Union activities. It is only when the matter came before this Tribunal that this allegation has been made. I am thus satisfied that there was no victimisation or want of bonafides or unfair labour practice, in the present case. That being so, ordinarily the findings of the management that guilt was proved should be accepted, unless it is found that on the evidence such a finding was not possible, i.e., unless the finding is shown to be perverse.

26. Most of the facts as to what happened on the night in question are not in dispute. On the night of 20-11-49, which was a Sunday, Madan Mohan Mishra who was an overman sirdar had gone underground. Similarly one Chattu Rajwar who appears to be a Pump Khalasi and one Harshan had also gone underground and none else had done so. Madan Mohan Mishra alleges that when he went underground, he found some corrugated iron sheets and a piece of brattice cloth lying near the bottom of the pit and he asked Chattu to remove them at some distance from the bottom of the pit so that there may not be any accident to a person descending the pit in darkness. After some time, Mishra came up the surface. He was followed by Chattu and Harshan who brought the corrugated iron sheets and the brattice cloth with them in the cage. The management alleged that all the three of them wanted to commit the theft of these articles but they were caught red-handed by one Dhumun Shaw, who made a report about it to the management, as a result of which a charge sheet was issued against all the three and they were dismissed. The case of Madan Mohan Mishra is that Chattu and Harshan had misunderstood his orders. He had told them to remove the articles at some safe distance from the bottom of the pit so that there may not be any accident to a person descending the pit in darkness, and the above persons misunderstood his order and brought out those articles. In my opinion, the circumstances in the case go to show that the explanation of Madan Mohan Mishra is not true and cannot be believed.

27. As I said above, this incident took place on the night of Sunday on which day the mine was completely closed. It is true that Madan Mohan Mishra was an essential service worker and

also that Chattu and Harshan were also essential service workers. That would mean that they may have to work even on a rest day and that they may be called upon to go underground on that day. The attendance register on that day however does not show that any of these three persons were present; that is, all the three persons had gone underground without having their attendance marked. It may then be noted that under Regulation 70 clause (2), a competent person has to inspect every part of the mine within such time not exceeding two hours before the commencement of the work in a shift. The first shift of Monday was due to begin at 6 A.M. Madan Mohan Mishra should have been required to go there to inspect it not before 4 A.M. The fact therefore that he went underground at about 12 o'clock mid-night without getting his attendance marked, is a very suspicious circumstance.

28. We have then the fact that the iron sheets and the brattice cloth were required for ventilation purposes as this mine is a gasy mine and special arrangements had got to be made for ventilation. It is not likely that they would be lying at the bottom of the pit as alleged. It is also not likely that the two workers Chattu and Harshan would misunderstand the orders of Madan Mohan Mishra. Madan Mohan Mishra says that he went down the pit at 10 P.M. and found these articles near the bottom of the pit and at that time asked Chattu to shift them to some distance, and Chattu said that he alone could not do it and when the Pump Khalasi was free, both of them would do it. Mishra has further said that he had specifically told Chattu to remove these articles a few paces from the bottom of the passage so that no accident could occur. He then says that at about 2 A.M. he returned to the bottom of the pit and went to the surface to verify that certain openings were properly secure. At that time, he saw these articles still lying at the bottom and thereupon he called Chattu and Harshan and asked them to remove the articles to some distance from the bottom. After giving these instructions, he went up and within 10 or 15 minutes these two persons came up with the above articles. In my opinion, the fact that he had a discussion with Chattu and the fact that he gave instructions twice would go to show that there was no scope for these two workers to have misunderstood him. As a matter of fact, if what he says is true, he had found the articles lying near the bottom at 10 P.M.; and though he asked Chattu to remove them, they were not removed for 4 hours (because he again found it at the very same place at 2 A.M.). If these facts are true, I believe that Madan Mohan Mishra would have seen that the articles were immediately removed in his presence to a safe distance before he went up to the surface.

29. We then find that it was about 15 minutes after he went up to the surface that the above two persons also went up with these articles. Madan Mohan Mishra says that it was about half an hour after the articles were brought to the surface that Dhunmun Shaw came there and during this half hour, the articles were in the cage. Now if what Mr. Madan Mohan Mishra says is true namely that the articles were brought up through a misunderstanding, he would have immediately asked the workmen to take the articles back to the bottom; but he did not do so, and the articles remained there in the cage at the top for about half an hour. It was then that Dhunmun Shaw came there and saw the articles there and he said that he would go to the office and make a report. Madan Mohan Mishra says that Dhunmun Shaw asked him as to why these articles were brought up and he told that Chattu and Harshan had brought them by mistake and still Dhunmun Shaw said that he would make a report to the office. In this connection, I may mention that it has been alleged by Madan Mohan Mishra that he was not on good terms with Dhunmun Shaw. He has said that Dhunmun was formerly working as a trolleyman and at that time he had occasions to make reports against him and because of this, there was a quarrel and that is why Dhunmun Shaw took the above opportunity of making a false report against Mishra. So far as the allegations of a previous quarrel are concerned, I do not believe them. It may be noted that when Madan Mohan Mishra was served with a charge-sheet, it was specifically mentioned therein that Dhunmun Shaw and others had found him attempting to take away the corrugated iron sheets and a piece of brattice cloth. It is significant to note that in his reply to the charge sheet, Madan Mohan Mishra has not made any allegation against Dhunmun Shaw. He has not said that there was an enmity between him and Dhunmun Shaw nor has he said that he was falsely involving him. All that he has said is that he lost his temper and abused Chattu and Harshan and that in the meanwhile Dhunmun Shaw came to the spot. If his present allegation that he and Dhunmun Shaw were not in good terms and that is why Dhunmun Shaw falsely involved him is true, I am sure he would have made this allegation in his reply to the above charge sheet. In his re-examination, he was asked the reason why he had not mentioned in his above reply about his having a previous quarrel with Dhunmun Shaw and he replied that he could not give any explanation. This shows that his allegations against Dhunmun Shaw are not true. It would further show that Dhunmun Shaw had no enmity and no reason to make a false report against him. The fact that Dhunmun made a report against Mishra immediately when he found the corrugated iron sheets and brattice cloth brought up to the surface by Madan Mohan Mishra and the above two workmen, would go to show that the allegations must be true. I may then mention that Mishra says that he explained the correct facts to Dhunmun Shaw and still Dhunmun Shaw said that he would make a report to the management. If Madan Mohan Mishra had no guilty conscience, he would have himself accompanied Dhunmun Shaw to the Manager and explained all the facts. His silence also goes against him.

30. It is true that Madan Mohan Mishra was acquitted by the Magistrate when he was prosecuted for attempting to commit theft; but this would not necessarily mean that he was innocent of the charge. Madan Mohan Mishra was an accused before a Magistrate and was not cross examined. The above facts and circumstances do not appear to have been brought out before the magistrate,

The management could know that Madan Mohan Mishra's presence on a Sunday night when he was not on duty and the presence of the other two workmen also when they were not on duty and their having gone down the pit at night without marking their presence when no one was there and brought up the above articles were circumstances which were prima facie evidence of a dishonest intention. In my opinion, looking to the circumstances and the admitted facts, it could not be said that the decision of the management was wrong. At any rate, it was possible for them to come to the conclusion that Madan Mohan Mishra's guilt was proved. In the absence of want of bona-fides, victimisation or the like, the findings cannot be disturbed. I therefore hold that Madan Mohan Mishra's dismissal was legal and proper and that he cannot therefore be reinstated nor can any damages or compensation be awarded to him.

The result is that the Reference fails firstly because Madan Mohan Mishra is not proved to be a workman and so there is no industrial dispute and secondly because on merits his dismissal is proper. He cannot therefore be reinstated nor can he be given any damages or compensation. I give my award accordingly.

The 17th April, 1953.

(Sd.) L. P. DAVE, *Chairman*,
Central Government's Industrial Tribunal, Dhanbad.
[No. LR. 2(359).]

S. R. O. 871.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (XIV of 1947) the Central Government hereby publishes the following award of the Industrial Tribunal Bombay, in the industrial dispute between the Bombay Port Trust, Bombay, and its employees.

BEFORE MR. S. H. NAIK, INDUSTRIAL TRIBUNAL, BOMBAY

REFERENCE (IT-CG) No. 1 OF 1952

ADJUDICATION

BETWEEN

The Bombay Port Trust, Bombay

AND

Its Employees

In the matter of an industrial dispute re. categorization of workmen, recruitment to category 'A', attendance allowance, holidays, etc.

APPEARANCES.—Mr. N. K. Petigara instructed by Mr. J. P. Thacker of Messrs. Mulla and Mulla, Solicitors, for the Bombay Port Trust.

Mr. N. V. Phadke with Mr. Manohar Kotwal, Secretary, Bombay Dock Workers' Union, for some employees.

Mr. V. V. Shirodkar, Treasurer, National Dock Workers' Union, for some employees.

AWARD

The Central Government was pleased to appoint me as an Industrial Tribunal by its Ministry of Labour Order No. LR. 2 (325), dated the 23rd July, 1952 and refer to me for adjudication the dispute between the Bombay Port Trust (hereinafter called the Port Trust) and its employees. The dispute relates to 9 demands made by the Bombay Dock Workers' Union (hereinafter called the Union) on behalf of the Shore Labour of the Port Trust, which have been set out in the Schedule annexed to the Order of Reference. It is perhaps for the first time that a dispute between the Port Trust and its workers has come up for adjudication by an Industrial Tribunal. In order to understand the dispute in its proper perspective and to get at the fundamental points of difference between the two parties it is necessary to appreciate the historical background of the dispute. I shall, therefore, briefly survey the events that led to the present dispute before I address myself to the demands on which I am called upon to adjudicate.

2. The Port of Bombay, the "Gateway of India" as it is appropriately called, is well known to the world as a port of international repute. On account of its central position and accessibility by sea and land it has served as a distributing centre for the trade from Western and Central India. In the beginning it was the monopoly of private companies to provide accommodation on the wharves and in the docks to the ships calling at the port. But it was found that these companies secured undue advantage by levying excessive wharfage and other charges. Taking

advantage of the depression in cotton trade which followed on the cessation of the American Civil War the Government of India brought in 1869 the Elphinstone Land and Pressing Company which by an extensive scheme of reclamation had acquired possession of land on the western frontage of the harbour. By the Bombay Port Trust Act of 1873 the administration and properties of the Company were vested by Government in a public trust. Government created a Corporation known as the Trustees of the Port of Bombay with power to manage the properties and levy duty on the cargo discharged or stacked on the wharves. There were other companies besides the Elphinstone Land and Pressing Company which competed with the Port Trust and put them to loss. Government therefore, bought all these companies in 1879 and amended the Port Trust Act and altered the constitution of the Board of Trustees so as to make it representative of all interests including labour. The Act provided for appointment by Government of a whole-time Chairman.

3. Having given a short history of the constitution of the Board of Trustees, I shall pass on to describe the kind and nature of labour available in the docks and a brief survey of the events that have culminated in the present reference. The labourers in the docks handle cargo are of two kinds, namely, (i) Shore Labourers and (ii) Stevedore Labourers. Shore Labourers are those who handle cargo on the wharves or transit sheds while it is in the operation of being loaded or unloaded. Stevedore labourers are those that work on board the steamer and who load cargo on vessels or unload it therefrom. They are employed by the stevedore firms who take contracts from the steamships for the above purpose and are, therefore, known as stevedore labourers. The shore labour and stevedore labour complement each other by the nature of work that the labourers do. The present reference relates to the dispute raised by the Bombay Dock Workers' Union on behalf of the shore labour and, therefore, it is not necessary in this award to make more than a passing reference to the other labour.

4. The Port Trust is responsible in law for the custody and safety of the import cargo placed on the shore and the export cargo received in the docks. It has to take as much care of such cargo as a bailee should. As the Port Trust is responsible for the safety of the goods while they are being handled in the transit sheds and on wharves it is natural that it should be in charge of shore labour which handles it. Prior to 1914, a private firm was supplying the shore labour required by the Port Trust under a contract given to it. This practice must have prevailed since the time when the docks were owned by and were in the possession of private bodies. On account of its responsibility as a bailee of the goods received in the docks the Port Trust thought it necessary to assume direct control over shore labour. The Port Trust, therefore, created a new department called the Hamallage Department and assumed direct control of shore labour since 1914.

5. Prior to 1914 the private firm which supplied labour to the Port Trust did not directly employ any labour. It entered into sub-contracts with intermediaries known as "Toliwalla". These Toliwallas supplied the requisite number of labourers and when they fell short of the requisite number they borrowed the required strength from their friends. On the abolition in 1914 of the system of giving contracts to the private firm of supplying the necessary labour, the Port Trust did not put an end to the long-standing practice of obtaining the required labour force by giving sub-contracts to Toliwallas. The old practice was still continued. When a ship made a request to the Hamallage Department for supply of labour that Department gave the necessary instructions as to the amount of cargo as well as the time limit within which it was to be handled. Toliwallas carried out the instructions by supplying the necessary amount of labour.

6. "The main problem in connection with dock labour is that of minimising the hardship due to unemployment or under-employment. The unemployment may not appear as in the West at 'calling-on-stands', but they are to be found in their lodgings, in the streets or at the dock gate seeking employment." The demand for dock labour is intermittent; it depends upon the arrival and departure of vessels and the size and nature of their cargo as well as on seasonal and cyclical fluctuations. In India, monsoon is an additional factor affecting both shipping arrangements and the amount of produce available for export. In all ports, therefore, there is usually labour in excess of immediate requirements and the tendency is for employers to encourage larger reserves than necessary in order to provide ample margins against emergencies... Usually the port authorities maintain a permanent establishment under their direct control, but the bulk of the labour engaged in loading and unloading is casual and is employed indirectly through stevedores or other contractors." (Report of the Royal Commission on Labour in India, pages 184-185.)

7. On account of unemployment and under-employment of labour at the docks as well as the casual nature of it the system of employing labour through intermediaries always led to corruption, bribery and favouritism as it gave the power to these middlemen to determine which labourers should receive employment. The Royal Commission on Labour therefore suggested decasualisation and registration of labour at the docks as a remedial measure. This is what the Commission said: "We consider that those who regularly offer themselves for work at the docks are entitled to secure as large a measure of regular employment as the nature of the calling will allow. This can only be secured through decasualisation. We recommend the adoption

in each of the main ports of a system of registration, which should be supervised and controlled by the port authority assisted by representatives of ship owners, stevedores and labourers. A register should be compiled of all workers who have a genuine claim to be regarded as dock labourers. It should include all those employed on the work of loading and unloading on board ships, or on shore, *i.e.*, harbour, dock, wharf, quay or at any similar place where such work is carried on. The existing system, which gives to low-paid Toliwallas and other intermediaries the power to determine which men should receive employment is bound to be associated with abuse..... The aim should be first to regulate the numbers of dock labourers in accordance with requirements and, secondly, to ensure that the distribution of employment depends, not on the caprice of intermediaries, but on a system which, as far as possible, gives all efficient men an equal share."

8. The Commission went on to point out that the average earnings of an Indian dock worker was about 50 per cent. less than those of an Indian wage earner. They thought the dock workers would be benefited if they received regular work at a lower daily rate than the then current rate for casual labour. They therefore recommended the registration of definite gangs and their employment on some regular system.

9. Government accepted the recommendations made by the Royal Commission on Labour and made efforts to induce Port Trusts to formulate the necessary schemes of decasualisation. The attempt made by Government did not however prove successful and therefore it had to formulate a compulsory scheme for registration of dock labour in 1939 but the scheme could not be brought into effect owing to the outbreak of war.

10. Although the operation of certain measures introduced during the war such as rationing and organised distribution of food supplies, facilitated the registration of labour at major ports, the problem, in the main, remained unresolved. Government therefore formulated a Bill in 1947 known as "The Dock Workers (Regulation of Employment) Bill, 1947" proposing to give power to the Central Government in respect of major ports and to the Provincial Governments in respect of others, to frame a scheme for the registration of dock workers with a view to secure greater regularity in employment and to regulate the employment of dock workers, whether registered or not, in a port. Provision was made in the Bill for the constitution of an Advisory Committee consisting of members representing Government, the dock workers and the employers of dock workers in equal proportion. (Indian Labour Gazette, December 1947, 380-381). The Dock Workers' (Regulation of Employment) Act, 1948 was passed embodying the principles of the above Bill. Provision was made in section 4 of the Act empowering the Central Government to frame schemes to ensure regularity of employment for dock workers and to secure an adequate number of such workers for efficient performance of dock work. Accordingly, the Central Government framed the Bombay Dock Workers (Regulation of Employment) Scheme, 1951 and made it applicable to stevedore labourers other than those engaged on coal work. Government however, did not frame any scheme for shore labour perhaps because the Bombay Port Trust which is a statutory body had framed a scheme of its own.

11. The old system of employment of shore labour through Toliwallas in the port of Bombay continued till 1947 in spite of the recommendation made by the Royal Commission. The Union therefore served a notice of strike on the Port Trust on the 1st November, 1947 to the effect that the shore labourers would proceed on strike with effect from the 15th November, 1947 if their demands for abolition of the Toliwalla system and direct employment of labour required by the Port Trust and higher wages and better conditions of service for the workers were not granted by the Port Trust. The Port Trust did not yield to the notice and therefore the dock labourers went on strike on the 15th November as stated in the notice. The strike lasted for a period of 9 days and was called off on the 24th November, as a result of a settlement reached between the Port Trust and the Union on the 22nd November, 1947.

12. The salient features of this agreement were that the Chairman of the Port Trust should recommend to the Trustees the abolition of the Toliwalla system by 31st March, 1948, that the Port Trust should directly employ shore labourers on and from 1st April, 1948 in accordance with a scheme to be framed by it for the purpose on the model of the Calcutta scheme, that at least 75 per cent. of the average daily number of dock labourers engaged during the three pre-war years of 1936-37, 1937-38 and 1938-39, subject to a minimum of 1500 men, should be engaged on a permanent basis with benefits of Provident Fund, Leave, Gratuity, Holidays and Weekly off such as were then admissible to the Trustees' non-scheduled permanent employees, that these men should be paid such "Retention" pay per month and given such piece work rates per every ton of cargo handled as may be decided upon by the Trustees and incorporated in the scheme, that the Trustees should be at liberty to enrol a sufficient number of casual labourers to be paid at daily rates as may be fixed by them and incorporated in the scheme, that these casual labourers should be entitled to grain concessions, payment of compensation under the Workmen's Compensation Act and medical relief according to the rules then existing and that the scheme to be formulated by the Trustees should not be finalised without giving the Union an opportunity to express its views thereon (see Appendix 2 to the written statement).

13. The Port Trust states that a draft scheme in accordance with the above terms of settlement was sent to the Union on the 8th March, 1948 and discussions ensued thereon between it and the Union representatives. It is alleged that the Union from the very outset was opposed to the piece work system which it had accepted as part of the scheme. The issue was therefore referred to Mr. S. C. Joshi, who was then the Chief Labour Commissioner (Central). He suggested that instead of the piece rate the time rate should be continued as a permanent measure in combination with an Incentive Bonus scheme designed to accelerate the labour output. Mr. Joshi suggested that the time rate should be substituted for the piece rate on the distinct understanding that if the average output fell below the prescribed minimum, the piece work rates should automatically replace the daily rates.

14. This scheme as envisaged in the agreement dated the 24th November, 1947, and as modified according to the suggestion of Mr. Joshi was discussed by the Port Trust authorities with the Union's representatives in the presence of Mr. Joshi on the 24th May and 9th July, 1948 (Appendices 4 and 5 to the written statement). In the meanwhile the services of the Toliwallas were terminated from the 20th April, 1948 after giving them one month's notice. A Recruitment Board consisting of 3 senior officials of the Docks Department and the Chief Labour Officer was constituted. The scheme was finalised after discussions with the labour representatives as stated above. It was sanctioned by the Port Trust on the 14th September, 1948 (Appendix 6 to the written statement). The Union was informed of this resolution by a letter dated the 22nd September, 1948 and that the scheme was subject to approval by the Government of India. The scheme embodied mainly the principles accepted in the agreement dated the 24th November, 1947.

15. The Union served a notice on the Port Trust authorities that the dock workers would proceed on strike on and from the 12th October, 1948 if before that date no amicable settlement was reached on the demands submitted to them which are detailed in appendix 7 to the written statement. The workers proceeded on a strike as intimated in the notice from the evening of the 11th October, 1948 notwithstanding the fact that the Government of India had referred the dispute arising from their demands to a Board of Conciliation. The Union subsequently called off the strike and submitted its demands to the Board of Conciliation. There was a settlement between the Union and the Port Trust before the Board of Conciliation on the 13th November, 1948.

16. The Union alleges that within three months of the introduction of the Decasualisation Scheme the Port Trust authorities made efforts to sabotage it by issuing "casual worker's cards" to about 260 workers in the first week of December, 1948. According to the Union the object of the Port Trust in recruiting a large army of casual workers was (1) to reduce the number of registered workers of both 'A' and 'B' categories which was done by not filling up the vacancies in the 'A' and 'B' categories of workers, and (2) to reintroduce the Toliwalla system, which stood condemned according to all shades of opinion and which had been abolished by the Port Trust itself. On top of all these, the Union states, the Port Trust introduced a third shift in the docks from the 16th June 1949 which has been continued till today. About a thousand casual workers, it is alleged, were employed for this new shift by the Docks Manager and they alone were asked to work the third shift without any interchange of workers from the other shifts. This third shift is a very hard shift to work. In order to obtain redress of all these grievances the Union submitted 14 demands to the Port Trust authorities for consideration on the 14th June, 1950. Some of the present demands were included in them. The Port Trust rejected the demands by its letter dated the 28th June, 1950. The Union therefore referred the dispute to the Regional Labour Commissioner of the Government of India. The Union alleges that the Port Trust did not allow the conciliation machinery of the Government of India to intervene in the dispute and, therefore, the dispute could not be settled one way or the other. There was no improvement in the situation till the end of January, 1951. On the 1st February, 1951 the Union again submitted a list of 16 demands including those already made for consideration by the Port Trust authorities and informed the latter that if they did not make it convenient to grant the demands within a reasonable period the Union would request Government to refer the dispute for adjudication under the Industrial Disputes Act, 1947. The Port Trust again rejected the demands by its letter dated the 12th February, 1951. The Union, therefore, referred the dispute to the Regional Labour Commissioner for conciliation. The Union complains that the Chairman of the Port Trust refused to discuss the demands across the table with its representatives and, therefore, the dispute could not be settled by the Regional Labour Commissioner in the way that he considered fair and just to both the parties. Attempts at conciliation on the demands made by the Union having failed Government referred the dispute to the Central Government Industrial Tribunal at Dhanbad on the 13th June, 1951. When the services of that Tribunal ceased to be available to Government they made the present reference to me.

17. In this reference the Union mainly seeks implementation of the Decasualisation Scheme introduced by the Port Trust on the 14th September, 1948 after abolishing the Toliwalla system. In some respects the demands made by the Union seek an improvement in that scheme. In the view of the Union this improvement has become necessary either on account of the experience gained since the starting of the scheme or on account of the needs of labour in existing conditions. It complains that since the inception of the Scheme the Port Trust gradually tried to undermine

the smooth working of the Scheme by employing a large amount of purely casual labour. In fact, its grievance has been that the Port Trust has actually "recasualised" labour by its action in recent years. While denying this charge the Port Trust has replied that the Toliwalla system had worked well for nearly four decades and there was something in it to commend itself from the point of view of economy and efficiency and that the employment of a certain amount of casual labour in all ports is inevitable. In order to appreciate these rival points of view it is necessary to live with the idea of the fundamental principles underlying the Decasualisation Scheme.

18. The employment of dock labour always tends to be casual and the main reason for it is the wide fluctuations in port traffic. The tendency to employ casual labour in docks becomes all the more greater in countries where there is surplus man power and labour is abundant. India is one of such countries. This tendency was decried by all interested in the well being of society. Unemployment and underemployment came in for severe criticism. The Court of Enquiry appointed to examine the claim of British dock workers for a minimum wage in 1920 observed :

"The Court is of the opinion that labour frequently or constantly underemployed is injurious in the interests of the workers, the ports and the public, and that it is discreditable to society. It undermines all security and is apt to undermine all self respect upon the workers' part. It is only among those who have sunk very far, and whom the system itself may have demoralised, that it can be accepted as a working substitute for steady and assured employment.

"In one sense it is a convenience to authorities and employers, whose requirements are at the mercy of storms and tides and unforeseen casualties, to have a reservoir of unemployment which can be readily tapped as the need emerges for a labour supply. If men were merely the spare parts of an industrial machine, this callous reckoning might be appropriate, but society will not tolerate much longer the continuance of the employment of human beings on those lines.

"The system of casualisation must, if possible be torn up by the roots. It is wrong. And the one issue is as to what practical means can be adopted of readily providing labour, while avoiding cruel and unsocial conditions."

19. To do away with the cruel and unsocial conditions existing among the dock labourers a large number of countries adopted the system of decasualisation of dock labour. The object of this system is to ensure greater regularity of employment for dock workers and to assure that an adequate number of dock workers is available for the efficient performance of dock work. In its report on Decasualisation of Dock Labour submitted by the office of the International Labour Organisation to its Inland Transport Committee it stressed *inter alia* the following important points for consideration.

I. MEASURES CONCERNING REGULARISATION OF EMPLOYMENT.

1. Desirability of limiting the competition for work in port transport by means of—

- (a) establishing registers of dock workers, adjusted so as to ensure the efficient turn round of ships and to provide regular dockers with a sufficient amount of work ;
- (b) granting priority right to employment in port transport to those who are registered as regular workers ; and
- (c) establishing a system of allocation to work which will secure equal opportunities of employment for the regular workers.

2. Desirability of organising adequate statistical research into employment in port transport and the factors affecting this employment.

3. Desirability of establishing registers of persons who might be available for casual employment in port transport in emergencies and who are not dependent on dock work for their existence.

II. MEASURES CONCERNING STABILISATION OF EARNINGS

1. Desirability of making provision for a system of guaranteed payment to regular dock workers.

2. Desirability of including in guaranteed payments—

- (a) a guaranteed payment in respect of each day or shorter period for which the workers are required to report for work (attendance money) ;
- (b) a guaranteed weekly wage.

III. SCOPE OF DECASUALISATION SCHEMES.

1. Desirability of introducing, in countries with a port transport industry, national or area schemes for the stabilisation of employment in this industry.
2. Desirability of making such schemes applicable to all classes of work in port transport in which employment is casual.

IV. STRUCTURE OF DECASUALISATION SCHEMES

1. Desirability of appointing national or area and local bodies for the administration of measures to stabilise employment in port transport.
2. Desirability of appointing on those bodies equal numbers of employers' and workers' representatives.
3. Desirability of coordinating the activities of the administrative bodies appointed for the stabilisation of employment in the port transport industry with activities of other bodies concerned with the proper functioning of this industry.

The remedial measures suggested by the International Labour Organisation office will have to be prominently borne in mind while adjudicating upon the present dispute.

20. Having briefly dealt with the history of the Port Trust and the labour employed by it and the background in which the present dispute is set as also the principle which should underlie a successful scheme of decasualisation of labour I shall now pass on to consider the various demands made by the Union.

21. It is convenient to group and discuss together demands Nos. 1 to 3 and 9 because they are inter-related and have a vital connection with the scheme of Decasualisation introduced by the Port Trust and the principles underlying it. Mr. Petigara stated that demand No. 9 is an independent issue which has no bearing on the other issues but I shall presently show that the priority right of 'A' and 'B' category workers to work in the third shift has a material bearing on the question of fixation of the strength of both these categories of workers.

22. *Demands Nos. 1 to 3 and 9.*—1. The number of workers in the 'A' category should be raised to 2,800.

2. The number of workers in the 'B' category should not exceed 500.

3. Recruitment to category 'A' should be solely from category 'B'.

9. Preferential claims of category 'A' and 'B' workers over purely casual labour for working the third shift.

"The Scheme for direct employment of Dock Labourers" introduced by the Port Trust from the 14th September, 1948 classified them into two main categories, namely, category 'A' consisting of non-scheduled permanent workers and category 'B' consisting of casual workers. The bulk of the labour was to be in category 'A' whose number was then tentatively fixed at 2,300. The number of labourers to be engaged in 'B' category was to depend upon daily requirements. Their strength was fixed for the time being at 500. The labourers in category 'B' were to be eligible for promotion to category 'A' when the strength of the latter was increased. The labourers in both the categories were to be issued photo identity cards and discs which were to be in distinctive colours. Workers in 'A' and 'B' categories were to be the registered labour force to be maintained by the Port Trust. In order, however, to meet peak requirements or shortages due to excessive absenteeism the Port Trust was at liberty to employ purely casual labourers. Their employment was to depend solely on departmental exigencies and was not intended to reduce the number of registered labourers. They were to be paid wages at the same rates as workers in 'B' category. Spot payment of wages was to be made to this class of workers unlike workers in 'A' and 'B' categories.

23. 'A' category of labourers was to be divided into various "groups" such as manganese ore labourers, Baroots (stackers), cart and wagon unloaders, etc. Each "group" was to consist of 4 gangs of 13 men each including a Morpia. Each "group" was to have at its head a "Special Morpia". Three "groups" were to form a "Company". The import and export work of various lines was, so far as practicable to be allotted to all the companies by rotation. Labourers in 'A' category were to be entitled, with effect from the 1st April, 1948, to the benefits of Provident Fund, Special Contribution, Leave and Holidays under rules and regulations applicable to non-scheduled staff. Labourers in both 'A' and 'B' categories were to be entitled to Workmen's Compensation, Medical Relief and Housing facilities and cheap grain concessions.

24. The Union complains that in spite of these clear provisions in the Decasualisation Scheme the Port Trust employs a large number of purely casual labourers and that since the introduction of the third shift in June, 1949 which has now become a permanent feature of the Dock Labour their number is considerably increased. The Union states that the casual workers employed by the Port Trust are placed in a separate register called the "Casual Workers Register", given permanent register numbers, paid wages monthly, fortnightly or weekly and are given

duties assigned to 'A' category employees under the scheme but without treating them as 'A' category workers and without the attendant benefits accruing to the labourers of that category. The Union contends that this action of the Port Trust is both against the letter and spirit of the Decasualisation Scheme and that the employment of a large number of purely casual labourers proves the necessity to increase the strength of registered labourers of 'A' category. It has, therefore, made a demand for increasing the strength of labourers in that category to 2,800.

25. The Port Trust resists the demand and contends that there is no scope for increasing the strength of 'A' category to 2,800. The grounds on which the Port Trust resists the claim made by the Union for an increase in the 'A' category workers are as follows. In order that the Decasualisation Scheme may be successful and effective it is necessary to ensure that the strength of the registered labour force is sufficient, but not more than sufficient to meet the normal foreseeable demands of the port transport industry. A surplus labour force creates problem not only for the Port Trust but also for labour because it results in irregular employment. The general economic background of the Port has been so variable and unpredictable that it is not safe to accept the current traffic position as a reliable basis for estimating a correct strength of the dock labour force. Under the Scheme adopted by the Port Trust the strength of 'A' category workers was, after prolonged discussions with the representatives of the Union and the Chief Labour Commissioner, fixed at 2,300. The average labour force employed during the three prewar years 1936-37, 1937-38 and 1938-39 aggregated to 2,000 workers. This force included a leave reserve of 30 per cent, a reserve much in excess of that provided for any other category of workers. In fixing the actual strength of 'A' category workers it was taken into account that they would be available for only 261 days in a year after deducting 10 days of casual leave, 15 days of privilege leave, 15 days of sick leave, 12 sanctioned holidays and 52 Sundays. Taking all these facts into consideration and as a concession to the Union the strength of 'A' category workers was fixed at 2,300. The sanctioned strength included about 175 labourers who had been engaged in performing certain agency functions undertaken by the Port Trust on behalf of the Government of India, Governments of States and other institutions. These contracts were terminated from the 1st December, 1949. Progressive use of modern mechanical equipment, the development of the port of Kandla and Government of India's declared policy of stopping import of foodgrain are factors which are likely to affect the labour force engaged in the port transport and bring about a heavy drop in the tonnage of cargo handled by them.

26. The classification by the Port Trust of shore labour into category 'A', category 'B' and purely casual labourers is based upon certain well recognised principles of decasualisation of Port Labour. It aims at restriction of competition for work in the Port by giving priority right to registered labourers for employment. It is only after registered regular dock workers (A and B categories) are provided with work that work could be allocated to purely casual labourers. The 'B' category labourers are also casual workers though they are registered labourers. The reason why two categories are made among the casual labourers is to be found perhaps in the fact that with a system of only one priority group of regular workers, there is likely to be, among the casual workers a group of persons seeking employment as dock workers fairly regularly. It is this class of casual workers that is put in 'B' category by the Port Trust.

27. Having classified shore labourers on certain definite and salutary principles which have been internationally recognised it would be a departure from those principles and a breach of agreed conditions of a solemn settlement if the Port Trust continues to employ a large complement of purely casual labour against the provisions of Decasualisation Scheme. The Port Trust denies that the employment of purely casual labour is against the Scheme introduced by it. It has much to say in support of employment of casual labour. It states that the employment of casual labour is prevalent not only in other Indian ports but also in foreign ports of international repute.

28. It is too late in the day for the Port Trust to argue against the principles underlying the decasualisation and consequent regularisation and registration of dock labour. I have cited enough authority in support of the decasualisation of labour necessary in all the ports. In the British ports dock work is allocated to unregistered labourers subject to certain limitations only when dock work is urgently required to be done and it is not reasonably practicable to obtain registered labourers for that work [see clause 10(3) of the Dock Workers (Regulation of Employment) Scheme 1947]. The scheme drawn up by the Commissioners of the port of Calcutta which was the model adopted by this Port Trust provides for employment of casual labour only when they cannot do without such labour but the Commissioner's intention to employ as few casual labourers as possible is expressed in the Scheme in clear and unequivocal language. What the Union in this case objects to is the employment of a large number of purely casual labourers in preference to the registered labourers in 'A' and 'B' categories who have a priority right of employment. It does not ask for a total elimination of purely casual labour. It wants the Port Trust to abide by its own scheme which permits employment of purely casual labour only to meet peak requirements or shortages due to excessive absenteeism.

29. The Port Trust admits that in order to accelerate the turn-round of shipping it introduced a third shift from June 1949 which works from 12-30 A.M. to 6 A.M. and that this shift is exclusively manned by a labour force which is purely casual. Its contention that this labour force

is selected from a panel of properly screened and selected labourers and are allotted work in strict rotation can hardly be a defence for having the third shift worked by purely casual labourers.

30. The Port Trust has admitted in paragraph 52 of its written statement that the third shift has become a permanent feature of dock work. If so, the Port Trust cannot maintain that the casual labour force employed for the third shift is intended to meet "peak requirements or excessive absenteeism". According to the Scheme, the employment of casual labour was not intended to reduce the strength of registered labourers. But the action of the Port Trust in having the third shift manned by purely casual labour and not filling the vacancies in the category of registered workers caused by normal wastages, resignation, deletions due to overstays of leave or dismissal due to misconduct has the effect of reducing the number of registered labourers. The Scheme requires the Port Trust to pay attendance money to 'A' and 'B' category workers calling for work and not finding it. After the introduction of the third shift it had to send away men from both these categories on several occasions for want of employment and pay them attendance money. The statement Ex-B-9 shows that sometimes the number of registered permanent workers sent on attendance allowance was much larger than the total number of workers employed in the third shift. Ex-B-10 shows that on certain days 'A' category workers were sent on attendance allowance without giving them employment while 'B' category workers were provided with work. Money spent on paying attendance allowance to permanent registered workers could have been saved if they had been provided with work in the third shift. The Scheme provides for payment of an incentive bonus to the labourers to whom daily wages are paid under it but no incentive bonus is paid to the casual labourers who work in the third shift. There is inherent in the third shift the danger of a tendency to perpetuate it rather than allow it to meet an unforeseen contingency or emergency. The third shift which was originally introduced in June 1949 to clear the congestion in the docks caused by the arrival of a large number of foodgrain ships has come to stay although there has been no congestion in the docks since then. According to clause 5 of the scheme, certain special type of work such as loading and unloading of carts and wagons, Baroot work, etc. was to be done by 'A' category workers but in the third shift all this work is done by casual labourers.

31. Dock labour involves strenuous work and the third shift, 'the grave yard shift' as it is called, starting at midnight and continuing till dawn, in the climatic conditions of Bombay makes such work all the more arduous and irksome. There is nothing commensurate with the drain and strain which night work in the third shift brings on to the casual labourers working it to recompense them either in the wages paid or the amenities provided to them. The recent tendency has been not to encourage night shift working in the industrial world. Dr. Frederick S. Lee in his book entitled "The Human Machine and Industrial Efficiency" has observed as follows: "Man is a diurnal, not a nocturnal animal and any attempts to change his innate habits in this respect are bound to interfere with his physiological processes. Man's body needs the stimulus of sun-light and is adapted to the atmospheric conditions of the day..... There is a general consensus of opinion that night work is more deleterious to health than is day work, and this opinion is supported by incontestable evidence; but in the present state of our knowledge it is hardly possible, nor indeed for our present purpose, is it necessary, to differentiate between deleterious effects *per se*, resulting from such conditions as the attempted imposition of an unphysiological rhythm and the lack of beneficial sunshine, and deleterious effects resulting from the fact that under our social condition the day's recuperation of the night worker is rarely equal to the night's recuperation of the day worker. Night work entails a diminution of sleep. The day's light, the day's sounds, the irresistible lure of an active world, and, with a married woman domestic duties, in a home where children must be cared for, meals must be prepared, and clothing must be washed—all these prevent sleep (see pages 61 to 70)." Night work has several disadvantages. It upsets family life.

32. It is for the Port Trust to consider whether there still exists the necessity to continue the third shift. If there is still need to continue it the Port Trust cannot do otherwise than rotate the registered labourers of 'A' and 'B' categories in such a way as to find priority of employment in all the three shifts in accordance with the accepted principles of Decasualisation. I have referred to the International Labour Organisation Office Report which stresses the need for establishing a system of allocation to work which will secure equal opportunities of employment for the regular workers and the desirability of making decasualisation schemes applicable to all classes of work in port transport in which employment is casual. Besides, it is just and fair that 'A' and 'B' category workers who enjoy certain privileges under the Scheme should also suffer the disadvantages of working at night if it becomes necessary for the Port Trust to work the third shift. Allotment of day and night shifts to the stevedore labour is sanctioned under the Bombay Dock (Regulation of Employment) Scheme 1951 and it seems that it has been working satisfactorily.

33. The Port Trust states that it had to get the third shift operated by employing purely casual labour as the Union was opposed to the introduction of that shift and did not co-operate with it in working it. But from the correspondence (Ex-B-3) produced in this case it can be seen that the Union made in the beginning certain suggestions regarding adjustments of the first and the second shifts instead of starting the third shift and later on proposed certain terms on which it was prepared to work the third shift. These terms no doubt could not be accepted by the Port Trust but the Union did not close the door for further negotiations when the terms offered by it did not find favour with the Port Trust. Assuming that the Union was not prepared to work

the third shift when it was first introduced there was no justification to turn down its present demand to give priority right of employment to 'A' and 'B' category labourers to work the third shift.

34. It was urged on behalf of the Port Trust that to give priority right to the 'A' and 'B' category workers to work the third shift would mean integration of all the three shifts and this is not warranted by the Order of Reference. Mr. Petigara contended that I would be acting without jurisdiction if I gave any direction with regard to the integration of the shifts. He stated that I would be within my bounds if I directed an increase in the strength of 'A' category workers and that 'A' and 'B' category workers should have a preferential right of employment in the first two shifts and if they cannot be absorbed in those shifts, then only those who cannot be so absorbed should be given a priority right of employment in the third shift.

35. It is true that Mr. Phadke stated in the course of his argument that the Union wanted an integration of the three shifts but he made it clear that what he is asking for is the preferential claim of 'A' and 'B' category workers to work in each of the three shifts. Demand No. 9 makes it quite clear that what the Union is asking for is the preferential claims of 'A' and 'B' category workers over the claim of purely casual labourers to work the third shift. That, as I have shown, is a fundamental principle of decasualisation. The idea underlying the Decasualisation Scheme is to eliminate uncertainty of employment for registered workers. This object can be best achieved by directing preferential employment of 'A' and 'B' category workers in all the three shifts including the third shift. The Scheme adopted by the Port Trust itself directs that the day and night shifts should be allotted by rotation and that is what the Dock Labour Board is doing with regard to stevedore labour. The third shift is also a night shift. It is clear, therefore, that the demand made by the Union has to be conceded. I, therefore, direct the Port Trust to give preference to 'A' and 'B' category workers over purely casual labourers in working the third shift. This disposes of demand No. 9.

36. Now let us see if the Union has really a good case for increasing the strength of 'A' category workers. As pointed out by the Office of the International Labour Organisation an essential step towards decasualisation is a study of the man power needs of the Port. The Port Trust itself took this factor into consideration while fixing the strength of 'A' category workers at 2300 while formulating its scheme of Decasualisation. In order therefore to properly assess the man power needs of shore labour we will have to take into consideration the total number of labourers including 'rank casuals' employed in all the three shifts. The number of labourers employed in the third shift, though purely casual, indicates the man power needs of the port.

37. The Port Trust has stated in its written statement that in order to ensure successful working of the Decasualisation Scheme it is necessary to see that the strength of the registered labour force is sufficient and not more than sufficient to meet the foreseeable demands of the port transport industry. The future needs of port transport industry could only be judged from its past and present needs. If in the past and at present it became necessary for the Port Trust authorities to employ a particular number of labourers we may safely assume that the average number of labourers required all these years will also be required for the future unless there are special factors which have greatly influenced the man power needs of the port in the past or are likely to influence them in future.

38. The Port Trust has referred in its written statement to certain factors which are likely to effect trade and also certain other factors which will necessitate a reduction in the man power needs of the port of Bombay. For instance, it has referred to the intended stoppage of import of food grains, the development of the port of Kandla, and the rationalised equipment which it has introduced in the handling of cargo. Government of India no doubt has aimed at stopping of import of food grains but the bulk of the food grain received in the port of Bombay was not handled by the Port Trust shore labour. The export and import policy of Government of India is influenced by a large number of factors which come into the picture while shaping its policy. In accordance with its policy imports might increase at one time while exports might decrease and *vice versa*. It will take some time for the port of Kandla to develop. It is too early to say how much deviation of traffic from the port of Bombay there will be on that account. In spite of the rationalised equipment introduced by the Port Trust it had to increase its man power by introducing a third shift from June 1949 which shows that rationalisation has not kept pace with the increase of transport work in the port of Bombay.

39. Mr. Petigara stated that while assessing the man power needs of the port of Bombay the following factors should be taken into consideration namely (1) the volume of work available (2) the volume of trade of the port, both actual as well as anticipated (3) the type of cargo handled (4) mechanical advancement in the port and (5) the cost it involves to the port authorities. The Report of International Labour Office refers to the (1) volume of work and its variation, (2) wages and (3) the desired income standard of the workers as factors of primary importance when determining the number of workers to be employed on a permanent basis (page 9). Let us apply this latter test and see what should be the strength of permanent workers to meet the present and immediate future requirements of shore labour for the port of Bombay.

40. It was not contended before me nor is there any dispute that the wages paid to these labourers are inadequate. Although the wages paid to them may not come up to the fair living wage standard as defined by the Fair Wages Committee there is no controversy that they are below

the minimum wage standard. The volume of work and its variations can be determined by finding out the cargo handled by the shore labour during a fairly long period. The Port Trust has given the total amount of import and export cargo received in the port of Bombay since 1936-37 upto 1951-52 (Appendix 12 to the written statement). I reproduce below the figures of export and import tonnage for the last 5 years :

Year	Import tons	Export tons	Total tons
1947-48	26,48,617	10,13,409	36,62,026
1948-49	27,18,399	9,53,697	36,72,096
1949-50	25,99,554	7,92,138	33,91,692
1950-51	26,10,137	11,00,658	37,10,795
1951-52	33,11,161	10,96,274	44,07,435

The statement shows a steady increase in the tonnage of cargo since 1936-37. The employment or a large force of purely casual labour since June 1949 whose number has gone on increasing from year to year (Ex. A, pages 2 to 5) is enough proof that the volume of work in the port is on the increase. In the course of his argument Mr. Petigara suggested that wilful slowing down by the workers coupled with want of efficiency on their part has resulted in a lower outturn and therefore the Port Trust was compelled to introduce the third shift manned exclusively by casual labour in order to secure a prompt, efficient and effective turn round of shipping.

41. To substantiate his contention that the outturn of work of shore labourers has gone down and that the tonnage of cargo handled by them has steadily decreased. Mr. Petigara has produced statement Exs. A-2 to A-7. Ex. A-2 gives the tonnage of import and export cargo handled by the shore labour from 1947-48 to 1951-52. It also gives the total tonnage handled both by shore and stevedore labour exclusive of "overside, oils and bulk cargo". It shows that the maximum amount of cargo handled by shore labour was in 1948-49 and the minimum in 1951-52 during the period of 5 years referred to above. This statement is intended to indicate that since the introduction of the Decasualisation Scheme in 1948 there has been an increase in the total tonnage of cargo handled by the stevedore and shore labour but there has been a considerable fall in the tonnage handled by shore labour. This fall in the tonnage handled by shore labour is further indicated in statements Exs. A-3 to A-6.

42. Ex. A-3 shows that under the Scheme adopted by the Port Trust the "datum line" of outturn of work by shore labour was fixed after reducing 64% from the outturn reached when the Toliwalla system was in existence. That this reduced datum line was not reached after the introduction of the Decasualisation Scheme can be seen from Ex. A-4. The same fact is emphasised in another way in Ex. A-5 by referring to shipwise handling of cargo by the shore labour and the earning of incentive bonus thereby. Ex. A-6 emphasises the same fact by comparing the output of shore labour with that of labour employed by Government and other organisations. The number of wagons loaded and the number of packages removed to various buffer sites since 1949 is shown in the statement Ex. A-7. Ex. 8 gives the number of labourers from A and B categories who were paid attendance allowance from 10-11-49 to 3-12-1952. The statement shows a progressive increase in such number of labourers.

43. I had asked the Port Trust to produce a statement showing the tonnage of cargo handled by shore labour since 1936-37 to 1946-47 as Ex. A-2 gives the tonnage handled by them since 1947-48 to 1951-52. That would have given us a complete picture of the amount of cargo handled by shore labour in different periods. But that has not been done. Ex. A-2 does not give the tonnage of cargo (excluding overside, oils and bulk cargo) exclusively handled by the stevedore labour. By its very nature shore labour appears to be more strenuous than stevedore labour. The former have to work on the wharves and the transit sheds, while the latter have to work in the holds of the ships in the sea. The outturn of work of shore labour depends upon the cooperation of stevedores and crane men in the transport of cargo from ship to shore and from shore to ship. If one unit of this composite labour force does no work or does not work efficiently the other cannot function properly. The crane men hold the key position. Refusal to work on their part or the adoption of a go slow policy by them is sure to adversely affect the outturn of work of shore labour. As pointed out by Mr. Phadke the tonnage of cargo handled by shore labour depends upon a large number of factors such as (1) the type of cargo handled, (2) efficiency and availability of stevedore and crane labour, (3) room available in the sheds, (4) the placement of export cargo, (5) the time taken and the procedure followed by customs authorities, (6) the capacity of cranes, (7) accidents while cranes are at work, (8) availability of various types of gear used at handling cargo at proper time and (9) availability of an adequate number of Helping Gangs and Gangs to do miscellaneous work.

44. Mr. Phadke stated that during the period of 5 years referred to in Ex. A-2 there was a long drawn out strike of crane men. That statement was not refuted on behalf of the Port Trust. The summarised statement (Ex. B-15) showing the working of the Incentive Bonus for the months

of January and February 1949 prepared by the Docks Manager shows that the earnings of Incentive Bonus by the shore labour was affected by the loss of 2 hours daily occasioned by the stevedore labour reporting for duty at 8-30 A.M. and the cranimen 'knocking off' at 4-30 P.M. and similar loss of working during night shift. The Docks Manager estimated the total loss of working hours at 14 per cent of the aggregate working time.

45. The Union submits that it is very difficult to obtain an actual estimate of the tonnage handled by shore labour in each of the three shifts. The Port Trust does not actually weigh the cargo put on the wharves. They obtain the figures of tonnage handled by the shore labour from stevedore labour who, in their turn, obtain it from the ships authorities on the basis of the ship's draft. Besides, it appears from the two letters Exs. B-14 dated 15/16th December 1949 and 19/20th September 1949 that the Port Trust pleaded its inability to supply to the Union figures of tonnage handled shift-wise. It is clear therefore that the figures of tonnage of cargo handled by shore labour given in Ex. A-2 do not provide a safe test or a reliable basis for determining the volume of work available to them. Ex. A-2 itself will show that there has not been gradual decline in the tonnage handled by the shore labour since the introduction of the Decasualisation Scheme. The statement clearly indicates that the tonnage handled in 1950-51 was more than that handled in 1949-50 and that handled in 1949-50 was more than the tonnage handled in 1951-52. The figures only bear out the fluctuating nature of port traffic.

46. The increasing number of shore labourers employed by the Port Trust from year to year emphasises the need for increasing the strength of registered labourers. The loss of efficiency and reduction in the outturn of work which have been pleaded by the Port Trust as compelling reasons for increasing the number of casual labourers are neither convincing nor satisfactory. In its written statement the Port Trust did not attribute employment of a large army of casual labourers by it to any slackness or want of effort on the part of the workers. There is no such defence. In none of the statements appended to the written statement was there any distant allusion to lesser outturn of work by shore labour. It was only after the hearing of this reference commenced that the Port Trust felt it necessary to produce the statement Ex. A-2 to prove that the handling of cargo by the shore labour has gone down. There was no reference to it either in the conciliation proceedings or in the correspondence carried on by the Port Trust with the Union. In the Dock Labour Reports for the years 1949-50 and 1950-51 published by the Port Trust there is no reference either to the go slow policy or want of effort on the part of shore labour.

47. The scheme adopted by the Port Trust provides sufficient safeguards against adoption of a go slow policy by labour. The Scheme provides for the drastic remedy of dismissal of workers who are habitually slow in their work. There is no evidence of the Port Trust having taken any such action against its workers. The scheme further provides for a Datum Line of tonnage and an Incentive Bonus Scheme. The daily wages provided in the Scheme are on the distinct understanding that the tonnage handled is up to the Datum Line. If the tonnage handled falls persistently below the Datum Line for a period of two to three months not due to reasons beyond the control of the labourers, the Port Trust is at liberty to introduce forthwith a system of piece rate system. The Port Trust has not reverted back to the piece rate payment of wages till now. If the labour adopted a wilful "go slow" policy the Port Trust could have enforced the remedial measures referred to above.

48. Assuming that the workers wantonly indulged in go slow tactics that was no reason to start a third shift and employ a large number of casual labourers to man it which cuts at the very root of the Decasualisation Scheme. If the Port Trust thought that the third shift was a safety valve or a weapon in its armoury to curb the undesirable or the unbending attitude of its workers I feel that the remedy adopted by it is worse than the disease. If the third shift was started as a temporary measure to meet an unforeseen and emergent situation which had arisen it has outlived its utility.

49. On behalf of the Port Trust my attention was invited to certain observations made by Shri T. S. Shankara Aiyar in his Report on Investigation for Reorganisation (1949-50). Shri Aiyar has pointed out in his Report that the introduction of the 'datum line' of output as the basis for determining bonus payment only but without attempting to correlate the guaranteed minimum wage to the datum line is the most objectionable feature of the scheme likely to render it uneconomic. He has shown that the uneconomic factor of the Scheme is that a worker gets the full monthly normal wage whether his performance touches the datum line or not and that this is in refreshing contrast with the Calcutta Scheme. Mr. Aiyar was concerned under the terms of his appointment with the reorganisation of the different departments of the Port Trust with a view to ensure their efficient and economical working. Naturally, therefore, he pointed out the objectionable part of the Decasualisation Scheme which interfered with economy in the working of the Port Trust. Mr. Aiyar did not decry the Scheme itself which has been recognised throughout the world as a healthy scheme to regulate the employment of dock labour. Mr. Saymon Williams, who was responsible for preparing the Decasualisation Scheme adopted by the Port Trust was strongly in favour of piece rate system (Ex. B-16). I think that the adoption of piece rate system of payment of wages under the Scheme would have avoided any undesirable tendency on the part of the workers.

50. Having said so much on the controversy raised at the hearing on the question of tonnage handled by shore labour and having shown from the statements produced by the Port Trust itself (appendix 12 to the written statement) that the import and export trade of Bombay is on the increase, I shall now proceed to determine the strength of the registered labour force required by it. While introducing the Decasualisation Scheme the Port Trust itself proceeded on the basis of the man power needs of the port. Ex-A-13 gives the details as to how the figures were worked out while fixing the number of 'A' category workers at the time of introduction of the Scheme. The average attendance of labourers in both the day and night shifts during the three pre-war years 1936-37, 1937-38 and 1938-39 was determined. That came to 1,546. This figure was increased by 30 per cent on account of absenteeism due to leave, sickness, etc. The figure then came to 2,009. This was again reduced to 75 per cent in order to determine the minimum of the permanent dock labour force. After reduction the number came to 1,506.

51. A period of 6 months from May to October, 1947, the period prior to the strike resulting in the settlement dated the 22nd November 1947, was taken as indicating the then current trend of port transport. The average number of labourers who worked during this period came to 2,496 per day. This figure was neither inflated by 30 per cent nor reduced by 25 per cent as in the case of figures for the pre-war period. The average of pre-war period was added to this figure (1,506 + 2,496) and the result so arrived at was divided by 2. That gave 2,001 or roughly 2,000. This was the basis adopted for fixing the number of 'A' category workers. It is not clear as to how ultimately their strength was fixed at 2300 but it seems that that was done to satisfy the demand of the Union and to absorb all the permanent labourers working under the Toliwallas, who had registered themselves. Mr. Shankara Aiyar has observed in his Report (part V, para. 23) that the Bombay Decasualisation Scheme was to a great extent influenced by the "awkward labour conditions prevailing at the time".

52. While determining the figure of permanent workers the three pre-war years must have been selected because restrictions were imposed during the war period on the import and export of goods. It was necessary to inflate the figures of average attendance by a certain percentage because the average attendance includes figures of attendance of substitutes who act in leave and other vacancies. As pointed out by the Port Trust in its written statement every worker is entitled to a certain amount of leave and holidays of which he can avail himself. Besides, proper allowance must be made for absenteeism, due to sickness. If so, it follows, that the number of permanent workers entered in the registers and on roll must be more than the number of average attendance by a reasonable margin. But a 30 per cent margin as contended by the Port Trust is unduly high. I think a 20 per cent reserve on account of absenteeism is more than sufficient. Mr. Phadke has pointed out that the stevedores labour have a reserve pool of 300 workers as against their 297 gangs of 8 men each. That works out at 121/2 per cent. It is also necessary to fix the number of 'A' category workers at 75 per cent of the figures derived by inflating the figures of average attendance on account of absenteeism, because that category represents the permanent registered labour force required by the Port Trust in all contingencies and at all events and they have conferred upon them by the Scheme itself certain benefits, privileges and amenities, which are denied to workmen of other categories. In Swedish ports only 70 to 75 per cent of the port work is carried out by regular workers with first priority for employment (page 11 of International Labour Organisation Office Report). I therefore adopt the above method of calculation in fixing the strength of 'A' category workers.

53. Working on the above basis let us see what should be the strength of 'A' category. In order that our estimates may be correct it is always necessary that the sampling period must be as wide as possible. The Port Trust has given the figures of attendance during the last 5 years from 1948 to 1952 in the various statements produced by it. These figures have been put together by Mr. Phadke at Ex. B-8. We may also take the average figure of attendance for the year 1947. Figures from 1939 to 1946 have not been supplied by the Port Trust and it is not safe to rely on those figures as they cover the period of war and the period following it. The figures of 1947 supplied by the Port Trust are not for the full year but only from May to October. It is common experience that due to monsoon arrival of ships and handling of cargo in the port is considerably affected from June to September. In order that the basis on which the permanent strength of registered workers is fixed may be safe and reliable I shall take the average for a continuous period of 6 years commencing from 1947 although the average for the year 1947 does not represent the average for the whole year but only a period of 6 months of slack port transport.

54. I have already held that the figures of attendance at the third shift have to be taken into consideration for purposes of determining the strength of 'A' category workers. Ex-B-8 gives the average figure of attendance of the third shift workers for the years 1949 to 1952. It is necessary to remember in this connection that the third shift was introduced only in June 1949.

My calculations, therefore, are as follows :—

Daily average attendance (except of third shift workers).

in 1947	2496
in 1948	3759
in 1949	4213
in 1950	2814
in 1951	3113
in 1952	3230

TOTAL 19625

Daily average per year = $\frac{19625}{6} = 3270$

The average attendance of third shift workers :—

in 1949	194
in 1950	261
in 1951	467
in 1952	471

TOTAL 1393

Daily average per year = $\frac{1393}{4} = 348$

The average of all the three shifts is :—

$$3270 + 348 = 3618$$

Add 20 per cent on account of absenteeism—

$$\frac{3618 \times 20}{100} = 724$$

$$\text{Total } 3618 + 724 = 4342$$

$$\text{Reduce to 75 per cent} = \frac{4342 \times 75}{100} = 3257$$

In its letter dated the 28th June 1950 addressed by the Port Trust to the Union it is stated that a leave reserve of only 11% would be quite adequate. I have stated above that the Dock Labour Board has made a provision of 12 1/2% on account of leave reserve. If, therefore, we add only 12 1/2 per cent. on account of absenteeism the figures work out as follows :—

$$\frac{3618 \times 25}{100 \times 2} = 452$$

$$\text{Add this to } 3618 = 4070.$$

$$\text{Reduce the above to 75\%} = \frac{4070 \times 75}{100} = 3052.$$

These calculations show that the normal strength of A category workers required by the Port Trust should be more than 2800. If so, it is manifest that the demand made by the Union is unassailable.

55. It is important in this connection to refer to certain observations contained in the note dated the 14th September 1948 prepared by the Chairman of the Port Trust (see Ex. B-16). He observed : " With the introduction of the two shift working the strength of labourers may have to be increased from 2800 to about 4300 which will mean another sum of about Rs. 17.10 lakhs per annum, but most of this cost will be offset by saving in the payment of wages for night work at present ".

56. Mr. Phadke has tried to reinforce his argument that the strength of 'A' category workers requires to be raised to at least 2800 from certain analogies drawn from the employment of stevedore labour. I have shown that the stevedore labour is a counterpart of the shore labour. A gang of stevedore labour consists of 8 men, whereas a gang of shore labour consists of 13 men including a Morpia. Stevedore labour has to handle grain in bulk, cargo discharged in the stream meant for preferential berths, oil and ammunition. The shore labour has nothing to do with such type of cargo. But they have to do certain miscellaneous type of work such as loading and unloading of wagons, carts and lorries, piling and stacking in transit sheds, removing packages to Un cleared Goods Warehouses, receiving and stacking of cargo in Duty and Bonded Warehouses, Sarus Work, making room etc. That is clear from clause 8 of the Decasualisation Scheme. Besides, it is pointed out by Mr. Phadke that whereas the shore labourers are expected and are made to

work for 28 days per month on an average, the stevedore labourers have to work for only 25 days in a month. He has, therefore, drawn the conclusion that the Port Trust must have in its employ 12 per cent more gangs than the number of gangs in the employ of the Dock Labour Board. Without accepting this conclusion let us assume that the extra work done by stevedore labour is offset by the nature and quantum of miscellaneous work as well as the work done for a greater number of days each month by the shore labour. It is at least clear that the Port Trust must have the same number of gangs as the Dock Labour Board has. The number of workers in 297 gangs of shore labour including Morpias would come to 3861 ($= 297 \times 13$). This figure when inflated by 20 per cent to make provision for absenteeism comes to 4633 and when reduced to 75 per cent comes to 3475.

57. Analogy is not always a safe test but I have applied it in the present case only to show that the number of 'A' category labourers now required by the Port Trust cannot in any event be less than 2800.

58. The Port Trust has produced a statement Ex. A-15 to show in what respect the calculations made by the Union in Ex-B-8 to determine the number of 'A' category workers is faulty and require adjustments. That statement shows that according to the Port Trust the present needs of the port as regards 'A' category workmen are only 2093 and not even 2300 as accepted in the Decasualisation Scheme. Calculations made in Ex. A-15 to arrive at this figure are as follows:—

Average attendance of A and B category workers including third shift workers during the last 5 years as per Ex.B-8.	3774
Deduct 15 per cent. for peak requirements having regard to heavy import of cargo during "glut" years.	566
Balance	3208
Deduct for agency work given up	175
Balance	3033
Deduct for markers and canteen workers.	160
Balance	2873
Deduct for helping labour.	82
Balance	2791
Reduce by 25 per cent.	
Number required.	2093

59. It was contended on behalf of the Port Trust that decasualisation of labour must depend upon the minimum number of workers required by the Port Trust and not upon the average annual attendance during extraordinary years. It was urged that 1949, 1950 and 1951 were extraordinary years, that in 1949 the arrival of ships bringing in cargo was so great that vessel after vessel had to wait in the stream without being able to discharge its cargo with the result that the shipowners had to levy a surcharge freight of 25 per cent. on the goods imported and that in 1951-52 there was the highest import of foodgrains and American cotton and that for all these reasons a deduction of 15 per cent. must be made in the annual average figure of attendance of 'A' and 'B' category labourers.

60. I have stated above that the total import and export trade of Bombay has increased from year to year and that it was the highest in the year 1951-52 (Appendix 12 annexed to Bombay Port Trust's written statement). There is no evidence that 1949, 1950 and 1951 were extraordinary years. The volume of import and export trade in 1948-49 was a little more than in the year 1947-48, but the volume of imports and exports was considerably more in 1950-51 and 1951-52 than in 1948-49. The note of the Port Trust Chairman dated the 14th June 1949 no doubt shows that in June 1949 there was an abnormal concentration of ships in the Bombay harbour as a result of food grain vessels arriving in numbers together with general cargo during the four weeks preceding 16th June with the result that the number of vessels waiting in the stream on 13th June rose to 34. But the rush was anticipated to continue only till about the end of August. Rush of work in the port during a particular period of year does not always mean an increase in the volume of trade. Such a rush is inherent in the nature of the port traffic. Besides, the food grain brought in bulk by the ships used to be handled not by shore labour but by outside labour. If, as contended by Mr. Petigara, the years referred to above were extraordinary years we must take into consideration the volume of port trade for those years equally with that in ordinary and lean years. That is why I have taken the average figures of attendance of the entire period of 6 years from 1947. It cannot be disputed that the basis on which the figures of average attendance for 1947 are taken is in favour of the Port Trust. Besides, the result of my calculations as shown above points out that the number of 'A' category workers should be more than that asked for by the Union. There is no need therefore to deduct 15 per cent. on account of peak requirements of 'glut' years.

61. While resisting the Union's demand to increase the strength of 'A' category workers from 2300 to 2800 the Port Trust has contended in paragraph 35 of its written statement that 1948-49 was an abnormal year from the point of view of port traffic. It has not contended as stated by Mr. Petigara at the time of the hearing of this dispute, that 1949, 1950 and 1951 were abnormal years. The Chairman's note referred to above shows that there was a rush of traffic in the port from June to August 1949 and Ex. B-8 shows that the figures of labour attendance in that year was considerably higher than during any other year. There is no evidence that except 1948-49 any other was an abnormal year from the point of view of port traffic.

62. Now let us discard the figures of attendance for the years 1948 and 1949 as abnormal years and take the figures of the last 3 years, that is, 1950, 1951 and 1952 as being year of average traffic and as indicating the current trend of trade and see how the figures work out.

Average daily figures of attendance of 'A' and 'B' category workers:—

1950	.	.	.	2814
1951	.	.	.	3113
1952	.	.	.	3230
TOTAL				9157

$$\text{Daily average per year} = \frac{9157}{3} = 3052$$

Average attendance of third shift workers in—

1950	.	.	.	261
1951	.	.	.	467
1952	.	.	.	471
TOTAL				1199

$$\text{Daily average per year:—} = \frac{1199}{3} = 400$$

The daily average of all the three shifts;

$$3052 + 400 = 3452$$

$$\text{Add 20 per cent. on account of absenteeism} = \frac{3452 \times 20}{100} = 690$$

$$\text{TOTAL} = 3452 + 690 = 4142$$

Reduce to 75 per cent :—

$$\frac{4142 \times 75}{100} = 3107$$

Alternatively

$$\text{Add } 12\frac{1}{2} \text{ per cent. on account of absenteeism} = \frac{3452 \times 25}{100 \times 2} = 432$$

$$\text{Total: } 3452 \text{ plus } 432 = 3884$$

$$\text{Reduce to 75 per cent.} = \frac{3884 \times 75}{100} = 2913$$

The above calculation is the one which is most favourable to the Port Trust. Even on that basis it is clear that the number of 'A' category labourers cannot be less than 2800.

63. Now reverting back to Ex. A-15 and the method of calculation adopted there we find that Mr. Petigara has deducted 175 from the daily figure of attendance. The Port Trust contends that the strength of 'A' category workers sanctioned under its Decasualisation Scheme included about 175 labourers who were engaged in performing certain agency functions undertaken by it on behalf of the Government of India, various State Governments and other institutions. Those contracts were terminated with effect from 1st December 1949 with the result that the above complement of 175 men became surplus to the needs of the Port Trust.

64. The Union's answer to the above claim is that the additional work of the British India Steam Navigation Company has been taken over by the Port Trust and consequently the number of labourers required for this additional work is offset by the number of labourers required to be reduced on account of termination of agency contracts. In the note below Ex-A-15 it is stated that the British India Steam Navigation work was taken up from about March 1949 involving taking over of about 71 men previously employed by the said Company and they were put in 'A' category and, although the agency work was given up about the end of December 1949, there was no consequential reduction in the number of 'A' category workers. It is further stated in the said notice that the attendance of 71 men taken from the British India Steam Navigation has been included in the figures of attendance of 'A' category workers given by the Port Trust.

65. Mr. Shankara Aiyar has pointed out in his Report (part V para. 25) that as the execution of agency work undertaken by the Port Trust was a contractual obligation the labour force required for it should have been included as part of nonscheduled permanent labour strength in the Decasualisation Scheme. This suggests that the Labour force employed by the Port Trust in carrying out agency functions had not been included in 'A' category workers under the Decasualisation Scheme. Port Trust has not adduced evidence to the contrary. Assuming that 175 Labourers doing agency work had been included in the 'A' category, their attendance is reflected in the figures of attendance prior to December 1949 and not thereafter. I have left out of account under my last method of calculation the figures of attendance prior to 1950 and shown that even then the strength of 'A' category workers required to be more than 2800. If we deduct 175 out of the figures arrived at as a result of the first method of calculation (3257 or 3052) it makes no difference so far as regards the strength of 'A' category workers asked for by the Union.

66. The last two items in Ex-A-15 about which there is a controversy are the figures 160 and 82 both of which have been deducted from the figure of daily attendance during the last 5 years. It is urged on behalf of the Port Trust that miscellaneous work done by labourers employed in marking and canteen work as well as the work done by helping gangs is not concerned with the handling of cargo and therefore the number of labourers doing such work should be excluded while determining the strength of the permanent labour force required by the Port Trust. The figure of daily attendance taken as the basis for our calculations includes labourers employed on the above work and therefore 160 on account of labour employed in marking and canteen work and 82 employed in helping gang work are deducted from the figure of daily average attendance in Ex-A-15.

67. Labourers doing marking, canteen and helping gang work have been included by the Port Trust in the category of shore labourers. They have been entered on the muster rolls of shore labourers and paid as such. The work that these labourers do is a miscellaneous type of shore work necessary for efficient and effective handling of cargo on the shore. For instance, the markers do the work of putting some distinguishing marks on the parcels to indicate the ship from which the particular cargo is discharged. Marking is necessary in order to prevent cargo from different ships from being got mixed up. A canteen was started by the Port Trust in 1950 and such of the shore labourers who had an aptitude to do that type of work were employed to do canteen work. It is stated that a number of canteen labourers are placed under the Labour Department of the Port Trust and the remaining will also be transferred to that department in course of time. It does not matter under what department these labourers work so long as they are designated as shore labourers and paid as such. The canteen is maintained for the benefit of labourers working on shore.

68. There was a long discussion at the Bar as to the exact nature of work done by the helping gangs. It was contended on behalf of the Port Trust that helping labour is necessary either for 'long carry' or for handling heavy lifts, that in the case of import cargo no 'long carry' is involved of goods meant for shed storage, that in the case of export cargo the practice has been to keep the two front bays of the ground floor of the shed free for receiving such cargo and that tractors are used to lift and carry heavy packages. But the Port Trust admits that the shipments of certain categories of goods require them to be placed alongside the transit sheds for purposes of export control facilities and that scrap metal is one of such commodities. It cannot be denied that when even goods stacked alongside wharves have to be removed outside transit sheds helping gang labour is employed. There is no proof that there is no scope for employment of such labour in future and that such labour is unnecessary for the needs of port traffic.

69. The Decasualisation Scheme adopted by the Port Trust did not leave out of account the work done by shore labourers like markers, helping gangs and canteen workers. It divided the entire labour force employed by the Port Trust into two classes *viz.* category 'A' and category 'B'. Clause 8 of the Scheme expressly provides that a labourer will ordinarily be required to work on all types of dock work such as handling of import and export cargoes, loading and unloading of wagons, carts and lorries, piling and stacking in transit sheds, removing

packags to uncleared warehouses, receiving and stacking cargo in Duty Paid and Bonded warehouses, 'sarus' work 'making room', etc. The same clause further lays down that labourers specialised in particular jobs will, as far as possible, be provided with work in their respective spheres, but in the absence of that particular work on any day they must be prepared to accept the type of work offered.

70. As the Port Trust have included labourers doing marking, helping gang and canteen work in the category of shore workers and have paid them as such they naturally come within the purview of the present dispute. If the Port Trust had sought to exclude them from the category of shore labourers they would have been required to raise a separate dispute. For all these reasons, I direct that the strength of 'A' category workers be raised to 2800.

71. I shall now address myself to demand No. 2. While formulating the Decasualisation Scheme, the Port Trust tentatively fixed the number of 'B' category workers at 500 because the number of labourers of that category to be employed by it depends upon daily requirements of labour. The daily requirements of labourers of 'B' category depend upon the absenteeism of labourers of 'A' category. The Port Trust, however, contends that 'B' category must include not only a leave reserve but a percentage of labour to meet unusual requirements and therefore no ceiling limit should be placed upon this category of workers. But unusual requirements of labour can be met from the rank casual labour force. I do not think, therefore, that it is necessary to provide for unusual requirements of labour in the 'B' category. I have stated above that the leave reserve on account of absenteeism should not be less than 12½ per cent and not more than 20 per cent. 20 per cent of 2800 comes to 560. My direction on demand No. 2 will, therefore, be that the strength of 'B' category workers shall not exceed 560.

72. Now coming to demand 3 there should be no difficulty in conceding that demand. The Union contends that while filling up certain vacancies of 'A' category workers recently the Port Trust did not invite applications from 'B' category workers but it filled these vacancies either by direct recruitment of outside labour or from the casual worker's register. The Union has complained that the applications made by some of the 'B' category workers for the aforesaid vacancies were rejected by the Docks Manager. The Port Trust admits that in accordance with departmental orders, vacancies in 'A' category are filled up to the extent of 50 per cent by promotions from the 'B' category and the remaining 50 per cent by recruitment from casual labourers. It maintains that suitability, capability and record of attendance must necessarily be taken into consideration at the time of promotion of workers while not ignoring their claims on grounds of seniority.

73. In the letter dated the 28th June 1950 addressed to the Union the Port Trust clearly stated that 'B' category workers have no claim whatsoever to being promoted to the 'A' category and that the Port Trust must reserve to itself absolute freedom to decide whom to appoint to the 'A' category and whom to 'B' category. I must point out that this is a clear contravention of the Decasualisation Scheme which states that labourers under 'B' category are eligible for promotion to category 'A' when the strength of the latter is increased. Vacancies in category 'A' might occur by natural wastages or by increase in the strength of such workers. In either case labourers in 'B' category have a right to be promoted to 'A' category. 'B' category workers form part of the registered labour force of the port. They have a priority right of employment in the port as against casuals. They have certain benefits conferred upon them under the Scheme which are denied to purely casual labourers. By their regular attendance at the docks and the experience which they gain in shore work they become qualified for being appointed as permanent labourers. The International Labour Organisation Office has pointed out that it is from the type of labour represented by 'B' category workers that regular dock workers are normally recruited and it should be the practice to grant them priority right of employment before other casual workers (page 7). In the port of Antwerp this group of dock workers has been called 'candidate' dock workers. It is manifest therefore that promotion to 'A' category should be from 'B' category. I direct accordingly.

74. I have already disposed of demand No. 9 and given my direction thereon. I shall now proceed to adjudicate on demands Nos. 4 to 8 in the serial order.

75. Demand No. 4.—The Union's prayer is that the attendance allowance of 6 annas per day paid to 'B' category workers should be increased to 12 annas a day and that they should also be paid dearness allowance at the rate of Rs. 1-6-0 per day with retrospective effect from the date on which the Decasualisation Scheme was introduced. It has tried to support this prayer by saying that both 'A' and 'B' category labourers form the registered labour force maintained by the Port Trust and are required to attend at call stands and control points every day including Sundays and holidays, that both these categories of labourers do the same type of work, 'B' category labourers serving as substitutes for 'A' category labourers during their absence and that there is no justification for making any difference in their service conditions except in regard to Provident Fund, Gratuity and Leave.

76. Under the Scheme adopted by the Port Trust 'A' category workers are the permanent non-scheduled workmen but not the 'B' category workers who are classified as casual. Under the

British scheme, attendance allowance is paid to permanent dock workers for each ordinary turn for which they report and are available for work, but are not allocated to work. Similarly, in New Zealand, Belgium and French ports permanent workers reporting for duty alone are paid attendance money. The Calcutta Port Trust Scheme on which the Bombay Scheme is modelled does not provide for payment of any attendance money to semi-permanent or casual workers. 'B' category workers form a reserve pool. They form as it were candidates in the waiting list who are to be promoted to 'A' category when their turn comes. Under the Scheme they have certain advantages which are denied to rank casual labourers. It was only as a sort of compromise that the Chairman of the Port Trust agreed to grant an attendance allowance of 6 annas to 'B' category workers which was embodied as a term of settlement arrived between the Port Trust and the Union in November 1948. Nothing has happened since then which calls for any change in the decision which was then arrived at by mutual consent. Dearness allowance is paid to fill up the gap between the wages paid and the cost of living. When no wages are paid because no work is done and attendance money is paid as a sort of retainer it is plain logic that no dearness allowance will be admissible. I therefore reject the demand.

77. *Demand No. 5.*—The demand is that the workers should be given 12 holidays per year and Sunday offs with full pay and allowances. The Union states that the Port Trust compels all its shore labourers to work on Sundays and holidays and punishes them if they choose to take rest on these days. The Port Trust denies this allegation. According to it work is provided only to those workers who offer themselves for work on Sundays and holidays and even then preference is given to 'A' and 'B' category workers over those who are purely casual. The last paragraph of clause 4 of the Decasualisation Scheme provides that labourers will be allowed off on Sundays and sanctioned holidays but that it is obligatory on them to attend on those days if required to do so by administration. The scheme sanctions special rates of wages for work on Sundays and sanctioned holidays. The nature of port traffic is such that it varies from season to season and even from day to day. The above provision in the Scheme is absolutely necessary to ensure a quick turn round of ships. If so, the Union cannot insist on having compulsory off on Sundays and sanctioned holidays and on getting full pay for those days even though no work is done. Their demand in this respect cannot be countenanced.

78. Turning to the other part of the demand it is necessary to refer to clause 3 of the Scheme. According to that clause 'A' category workers are entitled to attendance allowance for Sundays and holidays if no work can be provided to them on those days but not the 'B' category workers. The former being the permanent labour force of the Port Trust it is quite reasonable that they should be entitled to attendance allowance if they offer themselves for work on Sundays and holidays. I cannot, therefore, accede to the demand that workers other than those belonging to 'A' category should be paid allowances even when they are not required to work on sanctioned holidays and Sundays.

79. Then the question arises whether the labourers working on Sundays and holidays are entitled to full pay. Here again we have to refer to clause 3 of the Scheme which states that labourers in both the categories are entitled to wages at $1\frac{1}{2}$ times their normal rates of wages if called upon to work on Sundays and holidays. According to the last para. of clause 4 labourers called for work on Sundays and holidays are entitled to wages at this enhanced rate. The Port Trust interprets the normal rate of wages in the above clause to mean only the basic wage, whereas the Union interprets it to mean both basic wages and dearness allowance. Dearness allowance is paid, as stated by me above, for work done in order to make up the gap between the actual wage and cost of living. If so, it follows that labourers working on Sundays and holidays would be entitled to draw $1\frac{1}{2}$ times their total daily wages including dearness allowance. This is how the word 'wages' is interpreted under the Payment of Wages Act as also under the Factories Act. The Port Trust will have therefore to pay wages to the labourers attending the docks on Sundays and holidays at $1\frac{1}{2}$ times their daily basic wage plus dearness allowance. I direct accordingly.

80. *Demand No. 6.*—This demand seeks enunciation of principles regarding promotion of dock workers to the posts of Morpias and special Morpias. The Union states that at present the Port Trust appoints any person arbitrarily chosen by the Labour Inspector of Hamallage Department to act as Morpia of a gang when the Morpia of that gang goes on leave and that the worker so chosen to act as Morpia is not even paid the wages of a Morpia. The Union submits that in the absence of a gang Morpia the seniormost worker in the gang should be asked to work as Morpia of that gang and he should be paid wages as such. It submits further that whenever the post of a Morpia falls permanently vacant it should be given to the seniormost worker in the gang concerned and that these principles in the matter of promotion should be observed in the matter of promotion to the posts of special Morpias, temporary or otherwise.

81. The Port Trust is not prepared to accept the principle that seniority alone should be the criterion in the matter of promotion to the posts of Morpias and special Morpias. It resists the Union's demand alleging that it may happen that the senior-most worker in a gang is the least worthy of promotion either on account of his want of ability or want of power to exact work from his colleagues and obtain proper co-ordination from them. The Port Trust, therefore, pleads for ability and fitness being accepted as guiding factors in the matter of promotion to the posts of Morpias and special Morpias. According to it no necessity or occasion arises to appoint an ordinary

labourer to act as a Morpia during the temporary absence of a gang Morpia because there is always a surplus number of permanent Morpias available to take charge of the scheduled gangs. It states that this happens because usually a number of gangs have to be broken up due to excessive absenteeism and therefore the Morpias in charge of such gangs become available for appointment as heads of other gangs.

82. There cannot be any doubt that merit and fitness alone cannot be a safe test for promotion because selection for promotion on that ground will lead to much discontent and heart burning among the workers. It will prove a dangerous weapon in the hands of those who are in immediate charge of labour in keeping back the claims of senior men on the ground that they are unfit for promotion. It is likely to lead to favouritism, nepotism and corruption. That is why clause 14 of the Bombay Dock Workers (Regulation of Employment) Scheme, 1951 lays down that (a) seniority (b) merit and fitness for work in the category to which promotion is to be made and (c) record of past service shall ordinarily be the criterion for promotion. This is a safe and sound test and the Port Trust should accept it in the matter of promotion to the posts of Morpias. In the case of temporary absence of a Morpia or in filling up casual vacancy of a Morpia the seniormost worker in the gang should, unless a Morpia from some other broken up gang becomes available for the time being, be asked to work as Morpia and paid the wages of a Morpia. The Port Trust shall be guided by the principles mentioned above in the matter of such promotion.

83. Under this demand the Union has made a grievance alleging that although clause 5 of the Decasualisation Scheme requires Baroots and cart and wagon unloaders to be divided into gangs of 13 men each including a Morpia with a special Morpia for every four gangs the Port Trust does not implement this part of the Scheme and has refused to appoint Morpias and Special Morpias for gangs of such workers. The Port Trust does not accept the interpretation put upon clause 5 of the Scheme by the Union to justify the appointment of Morpias and Special Morpias in charge of labourers employed as Baroots and cart wagon unloaders. It states that these labourers are not deployed in gangs of 13 men each like regular shore labourers and that Baroots work in teams of 8 men each. It contends further that cart unloaders are posted according to requirements, and as these men worked originally on piece rates they never had nor did have a Morpia at their head. I do not think that the terms in which the demand is made warrant any adjudication on the above point of difference between the parties. The demand concerns principles governing promotion to the posts of Morpias and Special Morpias. It has nothing to do with the question whether Baroots and cart and wagon unloaders should be divided into gangs of 13 workers each and whether the latter class of labourers should have a Morpia at the head of each gang. I am afraid I shall be acting without jurisdiction if I adjudicate upon the above point.

84. *Demand No. 7.*—The Union has made this demand with a view to prove that it is necessary to fill up the existing vacancies in the posts of Morpias and Special Morpias. It has pointed out that a number of 'A' category workers are at present without permanent Morpia at their head and that the Port Trust has not filled up a number of vacancies existing in the cadre of Special Morpias and has not appointed a Special Morpia for a group of every 4 gangs. It complains that this action of the Port Trust amounts to a clear contravention of the Decasualisation Scheme.

85. The Port Trust has contended that at present the supervision of labour is undertaken by labour supervisors appointed after the Decasualisation Scheme was introduced and, therefore, Special Morpias who undertook the work of supervision under the Toliwalla system have now become surplus to its needs. The Port Trust has, therefore, urged that there is no need to fill up the existing vacancies in the posts of Special Morpias but, on the other hand, there is need to abolish those posts.

86. Arguments were addressed at considerable length on the need to abolish the posts of Special Morpia at the hearing of this dispute. Special Morpias appear to be a relic of old times when the Toliwalla system of employment of labour was prevailing. The Port Trust has pointed out that Special Morpias were appointed only by those Toliwallas who were required to handle cargo of more than one vessel at a time to ensure that their interest was adequately protected by them because the Toliwallas used to receive payment on a piece rate basis, while they paid their labourers wages on a daily rate basis. It states that some of the Toliwallas had in their employ Special Morpias at the time the Decasualisation Scheme was introduced and therefore the Port Trust thought it just and fair to concede the demand of the Union to absorb them.

87. The purpose in maintaining a supervisory labour force, containing as it does at present 42 Special Morpias, is well served by the maintenance of an equally strong force of labour Supervisors appointed by the Port Trust. The Port Trust has given a list of duties performed by the Labour Supervisors at Ex. A-10. Their duties at the sheds consists in procuring suitable handling gear including mechanical gear such as tractor mobile cranes and fork lift trucks, selecting portions of the shed and the adjoining open space for the storage of cargo having regard to the type of cargo discharged by a particular vessel and in selecting and making appropriate marks on special categories of cargo such as valuable and hazardous goods. It is clear that these duties can be more efficiently performed by those who are sufficiently literate to be able to refer to and assess intelligently the various documents available with the ship's agents and shed superintendents. Beyond these duties there is nothing in the handling of cargo which is outside the capacity of an ordinary labourer and therefore the Port Trust contend that there is no scope for supervision except at a

literate level. There is considerable force in this contention. The Special Morprias are not as well qualified or as literate as the Labour Supervisors to make use of the ship's documents or to perform the supervisory duties as efficiently as Labour Supervisors. From the qualifications of several existing Labour Supervisors it is evident that some of them are graduates and double graduates and a majority of them have studied at least up to Matriculation (Ex. A-11). Besides, there can be no doubt that supervision of labour by Labour Supervisors who are directly recruited for such purpose will be more effective and more efficient than supervision by men promoted from the ranks of labourers. At any rate, there is no need for duplication of machinery calculated to serve the same end.

88. Mr. Shankara Aiyar recommended in his Report (part I page 3) detailed job-analysis in the Hamallage and certain other departments. In accordance with this recommendation the Port Trust had the necessary job analysis instituted by the Eastern Bedaux Company who are experts in such matters. They found the Special Morprias ineffective in the discharge of their duties and of no help whatsoever for purposes of general supervision (Ex. A-17).

89. The Union contends that the posts of Labour Supervisors were in existence even when the Toliwalla system of employment of labour was in vogue and that since the abolition of that system the need for employment of Special Morprias has become all the more greater. It states that the list of duties (Ex. A-10) of Labour Supervisors produced by the Port Trust is misleading and that, although the clerical duties referred to in that list are performed by the Labour Supervisors, the supervision of shore labourers mainly falls on the Special Morprias. The Union has produced a parallel list of duties of Special Morprias (Ex. B-12) which shows that duties as specified therein overlap the duties of Labour Supervisors given by the Port Trust.

90. The existence of a few Labour Supervisors prior to the introduction of Decasualisation Scheme is no justification for the continuance of Special Morprias, especially when there are as many as 52 Labour Supervisors, qualified and trained to control and supervise labour. Shankara Aiyar's Report (Part V page 27) shows that generally two Labour Supervisors are assigned to each shed in all the 3 Docks. It is true that the Port Trust has not been able to produce any record to show that the duties mentioned in Ex. A-10 are assigned to Labour Supervisors but there cannot be any room for doubt that as the term 'Labour Supervisors' itself implies the supervision of labour is an essential part of the duty of Labour Supervisor and there is no need for duplication of machinery intended to serve this purpose as already pointed out by me. The Port authorities therefore desire gradually to do away with Special Morprias altogether and that is proposed to be done by not filling the vacancies in the posts of Special Morprias as and when they occur. I accede to this request and turn down the Union's demand in that behalf.

91. The Port Trust has not pleaded for the abolition of the posts of Morprias in its written statement nor were any arguments addressed to me on that question. A Morpia at the head of each gang is necessary not only to coordinate the efforts of the 12 labourers working in his gang but also to exercise an effective immediate control over them. If in the past Morprias have not been as earnest and enthusiastic in the performance of their duties as they should have been the remedies lie not in abolishing the posts of Morprias but in making them realise their duties at every step. The existing vacancies in the posts of Morprias shall, therefore, be filled up according to the principles already laid down.

92. *Demand No. 8.*—In August 1950 the textile workers in the city were on a prolonged strike on account of a trade dispute. The Hind Mazdoor Sabha which is a recognised All-India Federation of Trade Unions issued a directive to the Union representing the dock workers concerned in this dispute to observe 31st August 1950 as a day of token strike in sympathy with the textile workers. When this came to the notice of the Port Trust they issued a circular to all the dock workers stating that there was no justification for the strike contemplated by them and advising them not to take part in the strike on the 31st August. The Port Trust warned the workers saying that those who would proceed on strike would render themselves liable to disciplinary action being taken against them. On the 29th August the Union wrote to the Port Trust stating that its Managing Committee had called upon the workers to observe Thursday, the 31st August as a day of token strike in sympathy with the textile workers who had proceeded on strike from the 14th August. In accordance with the directions issued to them by the Managing Committee of the Union the workers did observe 31st August as a day of token strike. Later on the Docks Manager called upon the workers who had participated in the strike to submit their explanation as to why disciplinary action which might include dismissal from service should not be taken against them. After obtaining their explanations the Docks Manager passed orders withholding the increments of some of the workers for a period of 6 months without prejudice to their future increments and reducing by one increment the salary of others for a period of 6 months without prejudice to their future increments. The Union has, therefore, made the present demand asking for a withdrawal of the above order made by the Docks Manager.

93. The Port Trust contends that the workers rendered themselves liable to dismissal by absenting themselves on the 31st August and that it inflicted a more lenient punishment than the circumstances of the case warranted. It states that a sympathetic strike is in any case illegal and the Port Trust is not the only body which has taken disciplinary action in this behalf.

94. The Port Trust has not contended that the strike was illegal as being against the provisions of Secs. 22, 23 and 24 of the Industrial Disputes Act and has not adduced any evidence in that behalf. The question that arises for consideration therefore is whether the strike was justified. It is true that as a result of continued struggle between labour and capital carried out in different parts of the world the former have, as pointed out by the Labour Appellate Tribunal, acquired two fundamental rights, namely, (1) the right to organise themselves to protect their interest without molestation or victimisation by the employers and (2) the right to resort to strike as a means for enforcing their demands whatever may be the value of strike judged by common standards. But the strike in this case was a sympathetic strike. In *Oakes on Organised Labour and Industrial Conflicts*, it is stated that "a sympathetic strike that is one in which the striking employees have no demands or grievances of their own, but strike for the purpose of directly or indirectly aiding others, have no direct relation to the advancement of the interest of the strikers is an unjustifiable invasion of rights of the employer" (Ludwig Teller, Vol. I, p. 306-307). The strike in this case was not intended to advance the interest of the Port Trust workers. The grievance that the textile employees had against their employers was not a grievance which they had in common with the dock workers, nor is there any evidence that the textile workers were fighting for a principle which had anything to do with the dock workers or the advancement of their cause. The letter written by the Union to the Port Trust on the eve of the strike does not state that the strike of the dock labourers had any other purpose behind it than the sympathy which they had "with the quarter million textile workers of Bombay." The textile strike was held to be illegal under the provisions of the Industrial Disputes Appellate Tribunal Act (see I. C. R. January 1953, p. 107). I have no doubt, therefore, that the strike in question was not justified.

95. I am aware that in the case between Bihar Fire Works and Potteries Workers' Union and Bihar Fire Works and Potteries Ltd. (LLJ. 1953, Vol. I, p. 49) the Labour Appellate Tribunal has observed that strike is a weapon in the hand of labour to register their protest and that it cannot be said to be unjustified unless the reasons for it are absolutely perverse and unsustainable. The dock workers in this case are not alleged or proved to have any particular grievance and that as the Port Trust refused to redress it the workers went on strike to register their protest. An expression of sympathy with the textile workers was not, in my opinion, a justifiable cause for the strike. It may be that the Union to which the dock workers belonged had been affiliated to the same Federation to which the Textile Workers' Union had been affiliated and the Federation issued a directive to the Dock Workers' Union to proceed on sympathetic strike. But that could not justify the sympathetic strike. Party affiliations and party directives cannot ignore the employer's needs of labour and ethics of conduct and the requirements of discipline on the part of the employees. What is just must be just, not from the point of view of one of the parties to a dispute, but from the point of view of an impartial standard applicable to both.

96. The next question to be considered in connection with this demand is whether there was an enquiry into the conduct of each individual worker who went on strike on the 31st August and the charge has been proved in each individual case. It is not denied that there was a strike on the 31st August but the question for consideration is whether each of the charge-sheeted workers participated in it for it is possible that some of the charge-sheeted workers might have been on leave on that day or were absent due to illness or other causes. Although all the shore labourers went on strike the Port Trust thought that the ends of maintenance of discipline would be served if they brought to book only the Morpias and Special Morpias, who, as we know, are the leaders of shore labour gangs. The Port Trust therefore issued notices to Morpias and Special Morpias why disciplinary action should not be taken against them for wilful disobedience of its orders not to resort to strike. Each and every Morpia and Special Morpia, excluding those who were on leave, was served with such a notice and his explanation was called for. They all gave a uniform reply admitting their participation in the strike and stating that they had nothing to add to the letter which their Union had written to the Chairman of the Port Trust in that connection. The Union had written a letter to the Chairman in which it defended the action taken by the dock workers in sympathy with the textile workers in the city and maintained that there was nothing illegal in the strike as it was a weapon in the hands of labour for collective bargaining. The Port Trust came to the conclusion that the strike was unjustified and against discipline and punished those who had not reached the maximum in their wage scale by withholding their increments for a period of 6 months and by reducing one increment from the salary of those who had already reached their maximum for a period of 6 months. In both these cases the punishment imposed was without prejudice to future increments.

97. The fact of the Morpias and Special Morpias having taken part in the strike having been admitted the only point for consideration of the Port Trust was as to the quantum of punishment. The quantum of punishment is a matter within the discretion of the management unless it is so unjust as to call for interference by the Tribunal. It must be remembered that the punishment in this case was without prejudice to future increments. The net result of the punishment was a reduction in wages to the extent of one increment for a period of 6 months. I do not think that this is in any way excessive, or unconscionable.

98. The Union has contended that there was discrimination on the part of the Port Trust in the matter of punishment in as much as it reduced the wages of some workers by one increment

and withheld the increment in the case of others. The effect of both these forms of punishment, as pointed out above, is the same and I have stated that the reason why the Port Trust made this difference in the form of punishment is that some of the workmen had already reached the maximum of their wage scales. The Port Trust cannot therefore be accused of having made a discrimination in the matter of punishment meted out to the striking Morpias and Special Morpias.

99. The Union has contended that the punishment inflicted by the Port Trust amounts to a fine and that it is in contravention of section 8 of the Payment of Wages Act. It is not necessary for me to decide this question because the Union has its remedy open under that Act if the punishment in question is in violation of the provisions of the said Act.

100. The Port Trust had no Standing Orders of its own but it is clear that the action of its employees in going on an unjustified strike against its orders is subversive of discipline and amounts to misconduct. The Port Trust has followed the principles of natural justice in holding an enquiry against the employees concerned. There is no proof of mala fides or victimisation or of an unfair labour practice followed by the Port Trust in the matter of the disciplinary action taken against Morpias and Special Morpias for having participated in the strike. I cannot, therefore, accede to the Union's demand that the Port Trust should be directed to withdraw its order punishing the employees concerned.

101. That brings me to the end of the dispute referred to me for adjudication. It is, as already stated by me, the essential principles of decasualisation more than anything also that I have principally borne in mind in adjudicating upon the present dispute.

102. The main contending party in this dispute is the Bombay Dock Workers' Union, which represents a majority of the shore labourers. But some of the shore labourers are the members of another Union known as the National Dock Workers' Union. It is at the instance of the first Union that the present dispute was raised. On a notice issued to those workers who were not the members of the Bombay Dock Workers' Union, the National Dock Workers' Union entered appearance as some of the shore labourers happened to be its members and put in a separate statement of claim. At the hearing of this reference Mr. Shirodkar who appeared on behalf of that Union stated that he had nothing more to add to the argument addressed on behalf of the Bombay Dock Workers' Union.

103. Before I part with this case I must state that in my view this dispute would not have arisen or assumed the shape that it has at present assumed if the Port Trust had an Administrative Board consisting of representatives of Government, Port Trust and dock workers as suggested by the Royal Commission on Labour and International Labour Organisation Office. Such a Board is constituted both under the Dock Workers (Regulation of Employment) of England and the Bombay Dock Workers (Regulation of Employment) Scheme 1951 applicable to stevedore labour.

(Sd.) S. H. NAIK,
Industrial Tribunal.

(Sd.) K. R. WAZKAR, Secy.

[No. LR. 2 (325).]

BOMBAY ;

The 11th April, 1953.

New Delhi, the 30th April, 1953

S. R. O. 872.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the management of the Central Kankane Colliery and their workmen.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT DHANBAD

REFERENCE NO. 28 OF 1951

PRESENT :

Shri L. P. Dave, B.A., LL.B.—*Chairman.*

PARTIES :

The management of the Central Kankane Colliery.

AND

Their workmen.

APPEARANCES :

Shri S. S. Mukherjee, Pleader, Dhanbad, with Shri K. Ganguli, Manager, Central Kankanee Colliery, *for the management.*

Shri Mahesh V. Desai, General Secretary, Koyala Mazdoor Panchayat, Jharla, *for the workmen.*

AWARD

By Government of India, Ministry of Labour, Notification No. L.R. 2 (330) dated 11th September 1951, read with notification No. L.R. 2 (395) dated 4th February 1953, the dispute between the management of the Central Kankanee Colliery and their workmen in respect of disputes referred to in the schedule of the first notification has been referred for adjudication to this Tribunal.

2. The case of the workmen was that the earnings of the wagon loaders were below the earnings which they should have got under the award of the Board of Conciliation. They also urged that the wages of underground and surface trammers were low. It was further urged that the rates of the mistry, blacksmith, carpenter etc. should be raised. Lastly they urged that a primary school should be opened at the colliery premises.

3. The management, on the other hand, urged that the wagon loaders are piece-rated workers and their earnings depend on the amount of work put in by them and also on the supply of wagons. They said that they had no control over the supply of wagons and whenever there was a short supply they offered alternate work to the wagon loaders. The management then urged that the trammers are also piece-rated workers. They then urged that the rates fixed for the trammers and also for the blacksmith, carpenter etc. were reasonable. Lastly they urged that the demand for opening a primary school was not an industrial dispute and also that there was already a school in existence which was situated in the middle of this colliery and another colliery known as Kankanee Colliery and the workmen were not taking full advantage of the same.

4. When the matter came up for hearing before me today, the parties put in a memorandum of settlement arrived at between them. Under this agreement, it has been decided that six persons would be enough to load one wagon and the rest of the wagon loaders would be provided with alternate work. The procedure in case they refused to do alternate work is also settled, by the compromise. Regarding the trammers' rates, the Union has not pressed for the revision of these rates. The rates of blacksmith, mistry etc. have been agreed to be increased. Regarding the opening of a school, it has been agreed that though the opening of a school may not be obligatory, the management will consider the question on humanitarian point of view. In my opinion, the compromise is fair and reasonable.

I therefore pass an award in terms of the compromise, a copy of which is annexed herewith as Appendix 'A' to this award.

The 20th April 1953.

(Sd.) L. P. DAVE, *Chairman*,
Central Government's Industrial
Tribunal, Dhanbad.

APPENDIX A

1. It has been unanimously decided that 6 persons are enough to load 1 wagon (steam or slack) and the rest will be provided with alternative work such as slack removing, slack screening, steam stacking and allied jobs. If the labourers refuse to work then Raj Ballabh Lal, the Unit Secretary will be informed and sent to the spot for asking them to work or to be informed to Mr. S. K. Sarma or Secretary, Koyala Mazdoor Panchayat directly. During this period of controversy they will be marked absent. Till Mr. Sarma or some other official of the Panchayat finds out any other rate formulated by I. M. A. or Government, the present rate is to continue.

2. In view of the present earnings of the trammers the Union agrees not to press for the revision of their rates. However, if at any time the earnings of the trammer show great fluctuations which are not due to any laches on the part of the trammers the matter will be settled by direct negotiation between the management and the Panchayat and failing agreement between them, both the management and the Panchayat agree to put this matter before the R. L. C. as and when it arises.

3. Though the opening of a school is not obligatory on the management we the undersigned request the management to consider it on humanitarian point of view.

4. The Panchayat requests to increase the rate of persons concerned as follows to which the management agrees :—

- (a) Mahabir Lohar (Blacksmith) Rs. 60/-.
- (b) Karu Mian will get an increase of two annas on his basic wages.
- (c) Sabran Mistry will get an increase of half-anna on his basic wages.

It is, therefore, prayed that the Compromise be accepted and the matter disposed of accordingly.

(Sd.) S. S. MUKHERJI, *Pleader.*
for Central Kankanee Colliery.
20-4-53.

(Sd.) MAHESHI V. DESAI, *Gen. Secy.*
Koyala Mazdoor Panchayat,
20-4-53.

(Sd.) K. GANGULI, *Manager,*
Central Kankanee Colliery.
20-4-53.

Filed.

(Sd.) L. P. DAVE, *Chairman,*

The 20th April 1953.

Central Govt. Industrial Tribunal, Dhanbad.
[No. LR. 2(330)]

S. R. O. 873.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad, in the industrial dispute between the management of the Dhemo Main, Mithani and Bejdih collieries and their workmen.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT DHANBAD

REFERENCE No. 33 OF 1951

PRESENT :

Shri L. P. Dave, B. A., LL. B.—*Chairman.*

PARTIES :

The management of the Dhemo Main, Mithani and Bejdih Collieries.

AND

Their workmen.

APPEARANCES :

Shri Deven Sen, President, Colliery Mazdoor Congress, *for the workmen.*

Shri S. K. Bhattacharya, Chief Welfare Officer, M/S. Macneill & Barry Ltd. and assisted by the Assistant Chief Welfare Officer, Shri R. N. Chaudhuri, *for the management.*

AWARD

By Government of India, Ministry of Labour, Notification No. LR. 2 (355), dated 28th November 1951 read with subsequent Order No. LR. 2 (395) dated 4-2-1953, the dispute between the management of the Dhemo Main, Mithani and Bejdih collieries and their workmen regarding the wages of wagon loaders has been referred to this Tribunal for adjudication.

2. Usual notices were issued to the parties who filed their respective statements. The Colliery Mazdoor Congress, on behalf of the workmen, filed a written statement claiming that the wagon loaders should be paid a minimum increased scale of Rs. 7-8-0 per wagon with proper adjustment for distance and hardship involved. They also claimed proper adjustment in the case of wagon loaders carrying rubbles and steam. Lastly they claimed retrospective effect to the new wages with effect from 12-5-47. The management on the other hand urged that the wages paid by them, namely Rs. 7-8-0, Rs. 6-0-0 and Rs. 4-8-0 per wagon for steam, rubble and slack respectively were proper.

3. Issues were framed by me on 24-2-53 and the matter was fixed for hearing on 19-3-53. On that day four witnesses were examined. I also inspected the process of wagon loading at two of the collieries on that day, in the presence of Shri Sen, President of the Union and Shri Choudhury, the Assistant Welfare Officer of the colliery. Further hearing was resumed on 20-3-53 when three more witnesses were examined. The matter was then adjourned and the management was asked to produce certain documents etc. Further hearing of the Reference was adjourned to 14-4-53. On that day, the parties appeared before me and informed me that they had almost come to terms and requested me to adjourn the proceedings for a day to enable them to file a memorandum of agreement arrived at between them. The proceedings were thereupon adjourned to 15-4-53, on which date the parties filed a memorandum of agreement arrived at between them. A copy of the said memorandum is annexed to this award as Appendix A. Under the terms thereof, the rates of wagon loaders are fixed at Rs. 7-8-0, Rs. 7-0-0 and Rs. 6-8-0 per wagon in respect of steam coal, rubble coal and slack coal respectively and the new rates are to be given retrospective effect from 1-12-52. I am satisfied that the new rates are reasonable.

I therefore pass an award in terms of Appendix A annexed to this award.

(Sd.) L. P. DAVE, *Chairman,*
Central Government's Industrial Tribunal,
Dhanbad.

The 17th April 1953.

APPENDIX A

(1) The rates for the wagon loaders shall be as follows :—

Steam coal	Rs. 7 8 0 per wagon.
Rubble coal	Rs. 7 0 0 per wagon.
Slack coal	Rs. 6 8 0 per wagon.

(2) The above new rates shall be effective from 1-12-52.

(3) The payment from next week shall be on the basis of the above new rates.

(4) Each and every wagon loader who has actually been in employment during the period 1-12-52 to 14-4-53 (both days inclusive) or any part of the said period, shall receive payment of arrears in respect of the amount of work actually done by him during the aforesaid period (1-12-52 to 14-4-53) or any part thereof, as calculated according to the above new agreed rates less the amount already paid to him according to the old rates, within 6 (six) weeks from the date hereof.

(5) Application No. DS/P/108/53, dated 6-4-53, filed by the Colliery Mazdoor Congress is withdrawn without liberty to file any fresh application.

(6) The relevant charge-sheets in respect of the said application are also withdrawn by the management.

DHANBAD ;

The 15th April 1953.

For and on behalf of the workmen of
Bejdih, Methani and Dhemo
Main collieries.

(Sd.) DEVEN SEN,
Colliery Mazdoor Congress.
15-4-53.

For and on behalf of the Manage-
ment of Bejdih, Methani and
Dhemo Main Collieries.

(Sd.) W. D. ROBB.
for Macneill & Barry Limited.
15-4-53.

(Sd.) L. P. DAVE, *Chairman,*
Central Government's Industrial Tribunal,
Dhanbad.
[No. L R. 2 (355).]

S. R. O. 874.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Dhanbad in the matter of an application under Section 33-A of said Act, preferred by the workmen of Amlabad colliery against the management of the said Colliery.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT DHANBAD

APPLICATION No. 6 of 1952 ARISING OUT OF REFERENCE NO. 35 OF 1951.

In the matter of application U/S 33A of I.D. Act 1947.

PRESENT :

Shri L. P. Dave, B. A. LL. B.—*Chairman.*

PARTIES :

The workmen of Amlabad Colliery—*Applicant*

Vs. .

The management of Amlabad Colliery.—*Opposite Party.*

APPEARANCES :

None appeared for the workmen of Amlabad Colliery.

Shri S. K. Bhattacharya, Chief Welfare Officer, and Shri R. N. Choudhury, Asst. Chief Welfare Officer, for the management.

DECISION

This is an application which has been registered as one under Section 33A of the Industrial Disputes Act, 1947.

2. A dispute between the management of Amlabad Colliery and their workmen regarding the reinstatement of one Madan Mohan Mishra (being reference No. 35 of 1951) was referred to this Tribunal for adjudication. During the pendency of that reference, this application was made on 18-2-52. The application was in the form of a letter addressed to the Conciliation Officer and mentioned that the persons mentioned therein had been discharged, suspended or stopped from their work and that it was illegal. The letter or application was not addressed to the Tribunal, but a copy was endorsed to it. The names mentioned in the application were not legible. The application also did not separately mention as to who were the persons who were discharged, who were suspended, etc. nor the dates thereof were given. The applicant (namely President of the Amlabad Colliery Mazdoor Sangh) was requested to mention the names and designations clearly but no reply was received to this letter, in spite of another letter to the same effect having been written to him by the management. I issued a notice to the President of the Amlabad Colliery Mazdoor Congress and also to the General Secretary, Bihar Colliery Mazdoor Sangh asking them to appear before this Tribunal with all relevant documents and warned them that if no appearance was made, the matter would be disposed of in their absence. In spite of this, no one has appeared before this Tribunal on behalf of the workmen. The main Reference has since been heard. In the absence of any materials before me, it is not possible for me to consider this application. Actually, as I said above, this application was addressed to the Conciliation Officer and copy of it was sent to this Tribunal. In other words, the Union did not want this Tribunal to take any action, and the application need not have been registered. Having been registered, I would have considered it ; but in the absence of the appearance of anyone on behalf of the workmen and in the absence of any clear data about the alleged grievances, I am unable to do so.

The result is that this application fails and is dismissed.

(Sd.) L. P. DAVE, *Chairman,*

Central Government's Industrial Tribunal,
Dhanbad.

The 18th April, 1953.

[No. L. R.-2 (359).]

N. C. K. PPUSWAMI, *Under Secy.*

New Delhi, the 30th April 1953

S. R. O. 875.—In pursuance of rule 3 of the Minimum Wages (Central Advisory Board) Rules, 1949, the Central Government hereby nominates Shri N. B. Chatterjee, Deputy Secretary to the Government of India, Ministry of Works, Housing and Supply, to be a member of the Central Advisory Board in place of Shri B. B. Paymaster, I. C. S.

[No. LWI.24(116).]

P. N. SHARMA, *Under Secretary.*

New Delhi, the 5th May 1953

S.R.O. 876.—In pursuance of sub-section (4) of section 11 of the War Injuries (Compensation Insurance) Act, 1943 (XXIII of 1943), and rule 7 of the War Injuries Compensation Insurance Rules, 1943, the Central Government hereby publishes the following account of all sums received into and paid out of the War Injuries Compensation Insurance Fund during the six months ending the 31st December, 1952:—

Account of sums received into and paid out of the war Injuries Compensation Insurance Fund during the six months ending the 31st December, 1952

		Receipts					Expenditure			
Particulars		Amount	Progress of receipts upto the end of December, 1952			Particulars	Amount	Progress of expenditure upto the end of December, 1952		
1		2	3			4	5	6		
			Rs.	As.	Ps.			Rs.	As.	Ps.
Advance of Premium.	of ...	6,86,841	13	8		(i) Compensation under the War Injuries Compensation Insurance Scheme.	...	13,377	9	0
Advances from General Revenues under Section 11(2)	...	...				(ii) Remuneration of expenses of Govt. Agents.	...	55,592	9	6
Miscellaneous	...	...				(iii) Expenses of the staff employed to do work in the Provinces and at the headquarters of the Central Govt	...	1,33,770	8	6
						(iv) Expenses of the additional staff required to cope with the audit and accounting arrangements	...	15,515	5	7
						(v) Miscellaneous	...	11,515	10	6
Total	Nil	6,86,841	13	8		Total	Nil	2,39,771	11	1

[No. SS.142(19).]

K. N. NAMBIAR, *Under Secy.*

